

No. 7889

Vol
1906

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of

KATIE M. EUSTACE, ETC.

Alleged Bankrupt.

KATIE M. EUSTACE and CHAS. W. FOURL,

Appellants,

vs.

E. A. LYNCH,

Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

JUN 10 1935

PAUL P. MERRIN,

CLERK



No.

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of

KATIE M. EUSTACE, ETC.

Alleged Bankrupt.

KATIE M. EUSTACE and CHAS. W. FOURL,

Appellants,

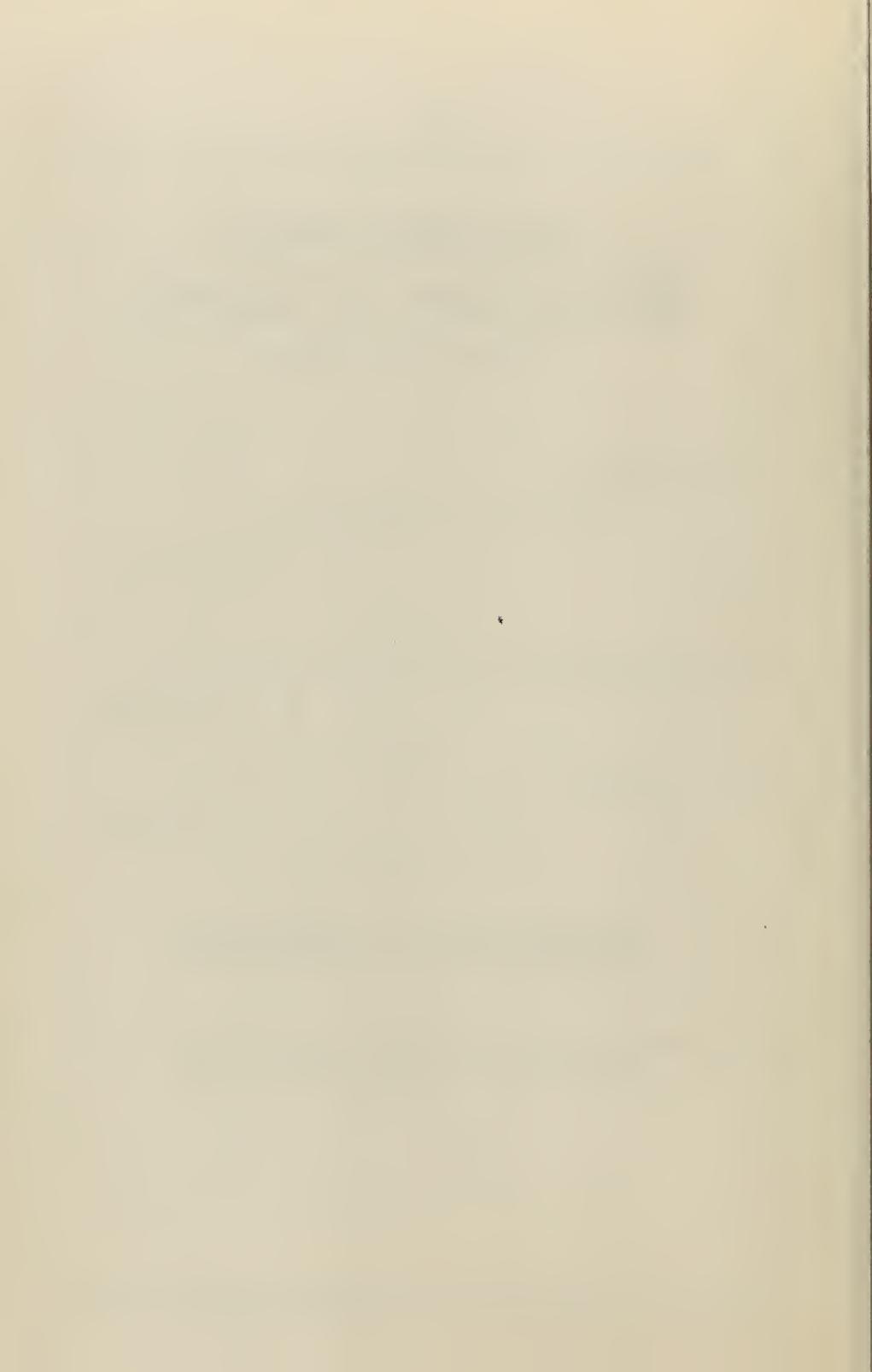
vs.

E. A. LYNCH,

Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.



INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Answer of Respondent, Chas. W. Fowlr, to Petition and Order to Show Cause Re Contempt.....	27
Assignment of Errors of Katie M. Eustace.....	151
Assignment of Errors of Chas. W. Fowlr.....	140
Bond for Costs on Appeal of Katie M. Eustace.....	157
Bond for Costs Appeal of Chas. W. Fowlr.....	146
Citation on Appeal of Chas. W. Fowlr.....	2
Citation on Appeal of Katie M. Eustace.....	4
Involuntary Petition in Bankruptcy.....	6
Names and Addresses of Solicitors.....	1
Notice of Appeal of Katie M. Eustace.....	150
Notice of Appeal of Chas. W. Fowlr.....	139
Order Allowing Appeal of Katie M. Eustace.....	156
Order Allowing Appeal of Chas. W. Fowlr.....	145
Order Appointing Receiver.....	13
Order Approving and Settling Statement of Evidence on Appeal of Charles W. Fowlr and Katie M. Eustace	122
Order In re Contempt.....	129
Order of September 12, 1934, Overruling Demurrer to Order to Show Cause.....	21
Order of September 13, 1934.....	23

Order of September 22, 1934, Finding Katie M. Eustace and Chas. W. Fourl Guilty of Contempt.....	124
Order of September 24, 1934, Containing Judgment and Sentence of Chas. W. Fourl.....	134
Order of October 1, 1934, Containing Judgment and Sentence of Katie M. Eustace.....	137
Order to Show Cause.....	20
Petition for Appointment of Receiver.....	11
Petition of Receiver for an Order to Show Cause in re Contempt and Restoration of Possession.....	16
Petition to Allow Appeal and to Fix Bond of Katie M. Eustace	149
Petition to Allow Appeal and to Fix Bond of Chas. W. Fourl.....	138
Statement of the Evidence by Charles W. Fourl and Katie M. Eustace on Their Appeals From Judgment and Sentence for Contempt.....	36
Testimony on Behalf of Petitioner :	
Eustace, Katie M.....	42
Lynch, E. A.....	39
Stevenson, J. G.....	40
Statement of the Evidence Proposed by Charles W. Fourl	46
Motion to Dismiss the Petition of E. A. Lynch.....	48
Testimony on Behalf of Petitioner :	
Dyer, George T., direct examination.....	85
Eustace, Katie M., direct examination.....	71
Cross-examination	78
Redirect examination.....	82
Recross-examination	84

Statement of the Evidence Proposed by Charles W.

Fourl—Continued

PAGE

Lynch, E. A., direct examination.....	52
Cross-examination	57
Direct examination (recalled).....	87
Cross-examination	88
Redirect examination	88
Direct examination (recalled).....	109
Cross-examination	111
Stern, Benjamin A., direct examination.....	89

Testimony on Behalf of Respondent:

Fourl, C. W., direct examination.....	97
Cross-examination	101
Redirect examination.....	105
Recross-examination	106

Exhibits:

Fourl's Exhibit A—Renewal Certificate.....	93
Exhibit B—Certificate of Fictitious Name, John M. Eustace.....	94
Lynch's Exhibits:	
Note for \$96.00 dated April 27, 1933.....	107
Check dated September 28, 1933.....	108
Check for \$600.00.....	108

Stipulation Settling Statement of Evidence on Appeal of Charles W. Fourl and Katie M. Eustace.....	120
---	-----



Names and Addresses of Solicitors.

For Appellant Katie M. Eustace:

HIRAM E. CASEY, Esq.,

Rowan Building,

Los Angeles, California.

For Appellant Charles W. Fourl:

EDWARD W. TUTTLE, Esq.,

Detwiler Building,

Los Angeles, California.

HIRAM E. CASEY, Esq.,

Rowan Building,

Los Angeles, California.

For Appellee:

RAPHAEL DECHTER, Esq.,

Stock Exchange Building,

Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

IN THE MATTER OF)
)
Katie M. Eustace, etc.,)
)
Alleged Bankrupt.)

E. A. LYNCH, Receiver)
of Katie M. Eustace, etc.,)

No. 23770-C

Petitioner)

CITATION ON APPEAL

vs.)

CHAS. W. FOURL,)
)
Respondent.)

UNITED STATES OF AMERICA, SS.

To E. A. Lynch, Alleged Receiver in bankruptcy in the above entitled matter and to his attorney, Raphael Dechter:

GREETINGS:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 24th

day of October, 1934, pursuant to an Order Allowing Appeal, filed in the Clerk's office of the District Court of the United States, in and for the Southern District of California, Central Division, in that certain case entitled "In the Matter of Katie M. Eustace, etc., Alleged Bankrupt," No. 23770-C, wherein E. A. Lynch is petitioner, pursuant to petition and order to show cause thereon, dated and filed September 11, 1934, wherein Chas. W. Fourl is appellant and you are ordered to show cause, if any there be, why the Order and Judgment in the said *cas* mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Geo. Cosgrave, United States District Judge for the Southern District of California, this 24th day of September, A. D. 1934, and of the Independence of the United States, the one hundred and fifty-eighth.

Geo. Cosgrave
United States District Judge.

[Endorsed]: Received copy of the within Citation on Appeal this 24 day of Sept. 1934 R. Dechter Attorney for Receiver & Court. Filed R. S. Zimmerman, Clerk at 7 min. past 2:00 o'clock Sep. 24, 1934 P. M. By L. B. Figg, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

IN THE MATTER OF)

)

Katie M. Eustace, etc.,)

)

Alleged Bankrupt)

_____)

E. A. LYNCH, Receiver)

of Katie M. Eustace, etc.,)

)

Petitioner,)

)

vs.)

)

KATIE M. EUSTACE,)

)

Respondent.)

No. 23770-C

CITATION ON APPEAL

UNITED STATES OF AMERICA, SS.

To E. A. Lynch, Alleged Receiver in bankruptcy in the above entitled matter and to his attorney, Raphael Dechter:

GREETINGS:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 30th

day of October, 1934, pursuant to an Order Allowing Appeal, filed in the Clerk's office of the District Court of the United States, in and for the Southern District of California, Central Division, in that certain case entitled "In the Matter of Katie M. Eustace, etc., Alleged Bankrupt," No. 23770-C, wherein E. A. Lynch is petitioner, pursuant to petition and order to show cause thereon, dated and filed September 11, 1934, wherein Katie M. Eustace is appellant and you are ordered to show cause, if any there be, why the Order and Judgment in the said case mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Geo. Cosgrave, United States District Judge for the Southern District of California, this 1st day of October, A. D. 1934, and of the Independence of the United States, the one hundred and fifty-eighth.

Geo. Cosgrave

United States District Judge.

[Endorsed]: Received copy of the within citation this day of October, 1934 R. Dechter Attorney for Petitioning Creditor & Receiver. Filed R. S. Zimmerman, Clerk at 20 min. past 2:00 o'clock Oct-2, 1934 P. M. By Theodore Hocke, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

In the Matter of)	
	)	No. 23770-C
KATIE M. EUSTACE, doing)	
business as EUSTACE PLUMB-	)	INVOLUNTARY
ING COMPANY,	)	PETITION IN
	)	BANKRUPTCY
Alleged Bankrupt)	
)	

TO THE HONORABLE JUDGES OF THE UNITED
STATES DISTRICT COURT:

The petition of OIL TOOL EXCHANGE, INC., a corporation, SPEIRS & MEADOWS, a copartnership, and A. M. KUPFER respectfully shows as follows:

I.

That KATIE M. EUSTACE is engaged in the plumbing business, doing business as EUSTACE PLUMBING COMPANY, and has for the greater portion of six months next preceding the date of the filing of this petition had and now has her principal place of business at 1246 East Ninth Street, in the City of Los Angeles, County of Los Angeles, State of California, and in the above District, and owes debts in excess of One Thousand Dollars (\$1,000.00), and is a commercial company, to-wit: engaged in the plumbing business.

II.

That your petitioners are creditors of said alleged bankrupt, having provable claims amounting in excess of securities held by them to more than the sum of Five Hundred Dollars (\$500.00); that the nature and amount of your petitioners' claims are as follows:

That the claim of the Oil Tool Exchange, Inc., a corporation, is based upon a judgment recovered in the Superior Court of Los Angeles County for the sum of \$6284.02, in action No. 366483, entitled, "Oil Tool Exchange, Inc., vs. A. M. Kupfer, K. Eustace, et al."

That the claim of Speirs & Meadows is based upon a judgment in the sum of \$650.00 recovered against said alleged bankrupt.

That the claim of A. M. Kupfer is for a judgment for costs recovered against said alleged bankrupt in the sum of \$49.95.

III.

That within four months last past and within four months next preceding the filing of this petition in bankruptcy, and while insolvent, the bankrupt suffered and committed the Oil Tool Exchange, Inc., to obtain through legal proceedings a judgment lien on real estate belonging to and standing in the name of the alleged bankrupt, to-wit, on April 24, 1934, and failed and neglected within thirty days from the date of said judgment lien was obtained to vacate or discharge the same.

That within four months preceding the filing of this petition and while insolvent and with intent to prefer Charles W. Fourn and I. Henry Harris over her other creditors, said alleged bankrupt did cause to be transferred to said Charles W. Fourn and I. Henry Harris a certain oil and gas leasehold in the Baldwin Hills, Los Angeles County.

That within four months preceding the filing of this petition in bankruptcy, and while insolvent, and with intent to hinder, delay and defraud her creditors, said alleged bankrupt caused to be transferred and concealed in the name of one G. Dibetta certain real estate situated at Huntington Beach, Orange County, California.

WHEREFORE, your petitioners pray that service of this petition, with a subpoena, may be made upon said alleged bankrupt as provided in the Acts of Congress relating to bankruptcy, and that it may be adjudged by the Court to be a bankrupt within the purview of said Acts.

OIL TOOL EXCHANGE, INC.

By B. A. Coates

SPEIRS & MEADOWS

By O. J. Meadows

By A. M. Kupfer

Petitioners.

R Dechter

Attorney for Petitioners

UNITED STATES OF AMERICA)
 SOUTHERN DISTRICT OF CALIFORNIA) ss
 CENTRAL DIVISION)

B. A. COATES, office manager of OIL TOOL EXCHANGE, INC., one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing petition, subscribed by petitioner, are true.

B. A. Coates.

Subscribed and sworn to before me this 22 day of August, 1934.

[Seal] Raphael Dechter
 Notary Public in and for the County of Los Angeles,
 State of California

UNITED STATES OF AMERICA)
 SOUTHERN DISTRICT OF CALIFORNIA) ss
 CENTRAL DIVISION)

O. J. Meadows, one of the co-partners of SPEIRS & MEADOWS, one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing petition, subscribed by petitioner, are true.

O. J. Meadows.

Subscribed and sworn to before me this 22 day of August, 1934.

[Seal] Raphael Dechter
 Notary Public in and for the County of Los Angeles,
 State of California

UNITED STATES OF AMERICA)
SOUTHERN DISTRICT OF CALIFORNIA) ss
CENTRAL DIVISION)

A. M. KUPFER, one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing petition, subscribed by petitioner, are true.

A. M. Kupfer

Subscribed and sworn to before me this 23 day of August, 1934.

[Seal]

Raphael Dechter

Notary Public in and for the County of Los Angeles,
State of California

[Endorsed]: Filed R. S. Zimmerman, Clerk at 27 min. past 4 o'clock Aug. 23, 1934 P. M. By L. B. Figg Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PETITION FOR APPOINTMENT OF RECEIVER.

The petition of A. M. KUPFER respectfully shows as follows:

I.

That he is one of the petitioning creditors in the above entitled matter; that it is absolutely necessary for the preservation of the estate that a Receiver be appointed for the following reasons: That said Katie M. Eustace has for a long time past been engaged in the plumbing business under the name of Eustace Plumbing Company; that said alleged bankrupt has been the manager and operator of said business; that said alleged bankrupt has stored a large amount of miscellaneous plumbing supplies, fittings, etc., at 1246 East Ninth Street, in the City of Los Angeles, and also at 166½ No. La Brea and 828-30 Ceres Avenue, Los Angeles; that said bankrupt plans and intends to dispose of and conceal such stock of plumbing supplies so as to avoid her creditors from securing the benefit of the same as assets of the above estate; that said bankrupt, for the purpose of hindering, delaying and defrauding her creditors, has for some time past been concealing in the names of dummies other real and personal property; that the approximate value of such business and property is the sum of \$10,000.00.

II.

That it is for the best interests of the above estate that a Receiver, if appointed, be authorized to continue the business of the bankrupt until the appointment of a

Trustee, for the reason that said business will be of great value to the creditors as a going concern.

WHEREFORE, your petitioner prays the Court for an order appointing Receiver herein and authorizing and directing him to receive the assets belonging to the above estate and to conduct the business of the bankrupt.

A. M. Kupfer
Petitioner

United States of America)
Southern District of California) ss
Central Division)

A. M. KUPFER being by me first duly sworn, deposes and says: that he is the petitioner in the above entitled action; that he has read the foregoing Petition For Appointment of Receiver and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

A. M. Kupfer

Subscribed and sworn to before me this 7 day of September 1934.

[Seal]

Raphael Dechter

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 34 min. past 3 o'clock Sep. 7, 1934 P. M. By L. B. Figg, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER APPOINTING RECEIVER.

On verified petition duly filed, asking for the appointment of a Receiver in the above entitled matter, and it appearing satisfactorily therefrom that it is absolutely necessary for the preservation of the assets of said bankrupt that a Receiver should be appointed, upon motion of RAPHAEL DECHTER, Attorney for said petitioners,

IT IS ORDERED THAT E. A. Lynch of Los Angeles, California, be and he is hereby appointed Receiver of all property of whatsoever nature and wheresoever located, now owned by or in the possession of said bankrupt, and of all and any property of said bankrupt and in possession of any agent, servant, officer or representative of said bankrupt, care for, inventory, insure, segregate and move all assets of said bankrupt until the appointment and qualification of the Trustee herein, and with the further authority to collect such accounts receivable as are due to said estate and with further authority to conduct the business and sell the same as a going concern, if it can be done with benefit to said estate, and said Receiver is authorized to do all and any such acts and take all and any such proceedings as may enable him forthwith to obtain possession of all and any such property; and

IT IS FURTHER ORDERED THAT THE DUTIES AND COMPENSATION of said Receiver are hereby specifically extended beyond those of a mere custodian within the meaning of Section 48 of the Bankruptcy Act to embrace the conduct of the business and

marshalling of assets, preparation of inventories, collection, sale and disposition of accounts and notes receivable, and conduct of business of said bankrupt as hereinabove specifically authorized, and

IT IS FURTHER ORDERED that all persons, firms and corporations including said bankrupt, and all attorneys, agents, officers and servants of said bankrupt forthwith deliver to said Receiver all property of whatsoever nature and wheresoever located, including merchandise, accounts, notes and bills receivable, drafts, checks, moneys, securities and all other choses in action, account books, records, chattels, lands and buildings, life and fire and all other insurance policies in the possession of them or any of them, and owned by said bankrupt, and said bankrupt is ordered forthwith to deliver to said Receiver all and any such property now in the possession of said bankrupt; and

IT IS FURTHER ORDERED that all persons, firms and corporations, including all creditors of said bankrupt, and representatives, agents, attorneys and servants of all such creditors, and all sheriffs, marshalls, and other officers, and their deputies, representatives and servants are hereby enjoined and restrained from removing, transferring, disposing of or selling or attempting in any way to remove, transfer or dispose of, sell or in any way interfere with any property, assets or effects in possession of said bankrupt or owned by said bankrupt, and whether in possession of any officers, agents, attorneys or repre-

sentatives of said bankrupt, or otherwise and all said persons are further enjoined from executing or issuing or causing the execution or issuance or suing out of any Court of any writ, process, summons, attachment, replevin, or any other proceeding for the purpose of impounding or taking possession or interfering with any property owned by or in possession of said bankrupt or owned by said bankrupt, and whether in possession of any agents, servants or attorneys of said bankrupt, or otherwise; and

IT IS FURTHER ORDERED that the said Receiver is directed and authorized, as provided under the Postal Laws and Regulations of the United States, to receive all mail matters addressed to the above named bankrupt; and

IT IS FURTHER ORDERED that before entering upon his duties, said Receiver shall furnish a bond conditioned for the faithful performance of his duties, with a good and sufficient surety or sureties, in the sum of \$5000.00.

Petitioning creditors to file a bond of \$500.00

DATED: This 7th day of September 1934

Geo. Cosgrave
District Judge

[Endorsed]: Filed R. S. Zimmerman, Clerk, at 34 min past 3 o'clock Sep. 7, 1934 P. M. By L. B. Figg, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PETITION OF RECEIVER FOR AN ORDER TO
SHOW CAUSE IN RE CONTEMPT AND
RESORATION OF POSSESSION.

E. A. Lynch, Receiver in bankruptcy herein respectfully petitions the court as follows:

I.

That he is the duly appointed, qualified and acting receiver in Bankruptcy herein.

II.

That immediately upon his qualifying as receiver here-in your receiver on September 10th at 11:45 A. M. went to the premises at which the above named bankrupt is conducting her business, to wit: 1246 East 9th Street in the city of Los Angeles, California; that your receiver went to the said premises accompanied by J. C. Keenan and W. D. Hunt; that your receiver found in charge of said premises J. G. Stevenson, who advised your receiver that he had been working for the said alleged bankrupt for a period of seventy weeks; that the bankrupt during all of said time had been conducting said business as far as said employee had observed; that as far as said employee knew said alleged bankrupt was the owner of said business and that he has received his compensation during all of said seventy weeks of employment at said premises from said alleged bankrupt; that your receiver left with said employee a certified copy of the order appointing your petitioner as receiver; that about 12 o'clock noon the bankrupt appeared in the presence of Charles M. Fourl, an attorney; that said

bankrupt and said Charles M. Fournl, attorney advised your receiver that said premises and said business was owned by John M. Eustace and ordered said receiver to quit said premises, claiming that he was an interloper and *trepasser*; that your receiver communicated with Raphael Dechter, the attorney for the petitioning creditors and was advised by said Raphael Dechter that if said bankrupt was in possession of the premises or in control of the premises that your petitioner as receiver succeeded to such possession and control, and if anybody else desired to obtain possession of said premises to instruct them to file a petition in the above entitled court for such purpose; that your receiver transmitted such advice and instructions to said alleged bankrupt and said Charles M. Fournl; that said bankrupt continuously threatened and ordered your receiver to quit said premises and stated that she was going to use all kinds of force to evict said receiver; that while your receiver was in charge of said premises said Katie M. Eustace appeared to be the only person who answered any telephone calls to transact any business and she ordered orders filled that she received over the telephone from a branch store at 166½ No La Brea and from other persons unknown to your receiver; that said bankrupt stated to your receiver that she would not hesitate to use a gun if necessary to evict said receiver; that in said premises there was a locked room in which your receiver was advised was the records and books of said business; that said bankrupt refused to surrender the keys to said locked storeroom to your receiver; that in the presence of your receiver said bankrupt opened said locked storeroom with keys in her possession but barred any access to said

room by your receiver; that about 5:45 p. m. on September 10th, 1934, said bankrupt called her attorney of record Hiram E. Casey and after talking with said Hiram E. Casey requested your petitioner as receiver to talk to Mr. Casey; that your receiver talked with said attorney, Mr. Casey and said attorney told your receiver that he was a trespasser and interloper and that he was going to advise the alleged bankrupt to use all force necessary to evict him from said premises; that your receiver advised Mr. Casey that he would call his counsel; but said Mr. Casey instructed Mrs. Eustace to refuse to permit your receiver to use said telephone and stated that he could go outside and use a telephone; that said Charles M. Fourl and Katie M. Eustace refused to permit your receiver to use said telephone and thereafter forcibly and violently evicted your receiver from said premises and forcibly resisted any attempts on the part of your receiver to re-enter said premises; that said Katie M. Eustace herself locked the door in the face of your receiver with the keys that she had in her possession at all times on said 10th day of September, 1934.

WHEREFORE your petitioner prays for an order to show cause directed to said Katie M. Eustace and said Charles M. Fourl directing each of them to show cause why they should not be held in contempt of court for interfering with the possession of the receiver of said premises and why possession of said premises should not be restored forthwith to your receiver.

E. A. Lynch

Receiver.

United States of America ()
 Southern District of California (SS
 Central Division ()

E. A. Lynch being by me first duly sworn, deposes and says: that he is the Receiver in bankruptcy in the above entitled action; that he has read the foregoing Petition for an order to show cause and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

E. A. Lynch

Subscribed and sworn to before me this 11 day of
 Sept. 1934.

[Seal]

Raphael Dechter

Notary Public in and for the County of Los Angeles,
 State of California.

[Endorsed]: Filed R. S. Zimmerman Clerk at 58
 min past 10 o'clock Sep. 11, 1934 A. M. By L. B. Figg
 Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER TO SHOW CAUSE.

Upon reading and filing the petition of E. A. Lynch, Receiver herein, and good cause appearing therefor,

IT IS ORDERED that KATIE M. EUSTACE and CHARLES M. FOURL be and each of them is hereby directed to appear in the Court Room of Hon. George Cosgrave, in the Federal Building, Los Angeles, California on the 12th day of September, 1934, at the hour of 2 o'clock P. M., then and there to show cause, if any they or either of them, has why an order should not be made declaring them in contempt of court for interfering with the possession of the receiver herein of the premises at 1246 East 9th Street, Los Angeles, California, and why an order should not be made restoring possession forthwith of said premises to your receiver, and why an order should not be made restraining them from interfering with the possession of your receiver of said premises.

Dated September 11, 1934.

Geo. Cosgrave
Judge.

Time for service of this order is hereby shortened to 1 day.

Geo. Cosgrave
Judge.

[Endorsed]: Filed R. S. Zimmerman Clerk at 55 min past 11 o'clock Sep. 11, 1934 A. M. By L. B. Figg Deputy Clerk.

At a stated term, to wit: The September Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, Calif., on Wednesday, the 12th day of September, in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable: GEO. COSGRAVE, District Judge.

In the Matter of)
)
 Katie M. Eustace, etc.,) No. 23770-C Bkey.
)
 Alleged Bankrupt.)

This matter coming on for hearing on Petition filed Sept. 11, 1934 of E. A. Lynch, Receiver, for an order to show cause directed to Katie M. Eustace and Chas. M. Fowl in re contempt and restoration of possession; Raphael Dechter, Esq., appearing for the Trustee; Hiram E. Casey, Esq., appearing for the Alleged Bankrupt;

H. E. Casey, Esq., makes a statement and asks time to file pleading to Order to Show Cause; R. Dechter, Esq., makes a statement; H. E. Casey, Esq., orally demurs to the Order to Show Cause, which demurrer is overruled and exception noted, whereupon,

E. A. Lynch, Receiver, is called, sworn and testifies on direct examination by R. Dechter, Esq., and is cross-examined by H. E. Casey, Esq.;

Mrs. Katie M. Eustace is called, sworn and testifies for the Receiver on direct examination by R. Dechter, Esq., is cross-examined by H. E. Casey, Esq., testifies on redirect examination by R. Dechter, Esq., and in connection with her testimony the following exhibit is offered, admitted in evidence, and marked as follows, to-wit:

Receiver's Ex. 1: 5 Checks in blank, signed by Jos. A. Griffith;

Geo. H. Stephenson is called, sworn and testifies for the Receiver on direct examination by R. Dechter, Esq., and is cross-examined by H. E. Casey, Esq., whereupon,

The Receiver is instructed to take possession of the property, and the Court having stated that if there is any interference with the Receiver, the Court will be inclined to be severe about it, Mrs. Eustace turns over the key to Receiver E. A. Lynch in open court, and Mr. Griffith having thereupon been instructed to turn over the books to Receiver Lynch, on motion of R. Dechter, Esq.; at the hour of 5:23 p. m. recess is declared.

[TITLE OF COURT AND CAUSE.]

ORDER

The petition of E. A. Lynch, Receiver in Bankruptcy herein, and the order to show cause thereon directed to Katie M. Eustace and Charles M. Fourl, came on for hearing in the court room of the Honorable George Cosgrave, District Judge, on September 12th, 1934, at the hour of 2:00 o'clock P. M., E. A. Lynch, Receiver, appearing in person and by Raphael Dechter, attorney at law, and Katie M. Eustace appearing in person and by Hiram E. Casey, attorney at law, Charles M. Fourl not appearing, it appearing to the court that service was not effected upon such respondent, and the matter having been duly and regularly heard and submitted, the Court now finds as follows:

That E. A. Lynch was appointed as Receiver in Bankruptcy herein on September 7, 1934, and duly qualified as such Receiver on September 10, 1934; that on September 10, 1934, at 11:45 A. M. said Receiver went to the premises at which the above named bankrupt was carrying on business, to-wit, 1246 East 9th Street, in the City of Los Angeles; that said Receiver was accompanied by J. C. Keenan and W. D. Hunt at said time; that upon arrival at said premises said Receiver found in charge of said premises one J. G. Stevenson, who had been working for the alleged bankrupt for a period of seventy weeks; that the bankrupt for approximately seventy weeks prior to the appointment of said Receiver had in her possession the keys to said premises, the management of said business, and direction of said business; that said J. G. Stevenson was employed by said

Katie M. Eustace and received his compensation from said Katie M. Eustace; that in the operation of said business said Katie M. Eustace carried the bank account of the business in the name of the bookkeeper, J. A. Griffith, in which bank account she caused to be deposited the income from said business; that said J. A. Griffith would sign checks in blank and deliver the same to the bankrupt for use by her, if she saw fit; that at the time of the hearing of the order to show cause herein the said bankrupt had in her possession five checks signed by said J. A. Griffith on the Hancock Park Branch of the California Bank of Los Angeles, which said checks were undated and not filled in, with the exception of the signature of said J. A. Griffith; that said bank account was used by said bankrupt for her personal use, such as the payment of personal expenditures; that a certified copy of the order appointing the Receiver was delivered by said Receiver to said J. G. Stevenson; that about 12:00 o'clock noon on September 10, 1934, the bankrupt appeared at the above address accompanied by said Charles M. Fournl, attorney at law; that said bankrupt and said Charles M. Fournl demanded and directed that said Receiver quit and abandon the possession of said premises; that said Receiver advised said bankrupt and said Charles M. Fournl that in view of the fact that the bankrupt was in control thereof that he as Receiver succeeded to such possession and control and that if she felt that the Receiver should not remain in possession of said premises that she should file her petition with the above Court;

that said bankrupt threatened and ordered said Receiver to quit said premises, notwithstanding such information by the Receiver; that said Receiver was barred from entrance to a room on the mezzanine floor on said premises to which the bankrupt had the keys; that said bankrupt refused to surrender said keys to the premises and to said locked storeroom on said mezzanine floor; that about 4:45 P. M. on September 10, 1934, said bankrupt called her attorney of record, Hiram E. Casey, and thereafter requested that the Receiver talk to said Hiram E. Casey; the Receiver did talk to said attorney, Hiram E. Casey, and said attorney advised said Receiver that he was going to instruct the bankrupt to use all force necessary to evict him from said premises; that the Receiver said he would thereupon call his attorney for advice and that said Hiram E. Casey thereupon instructed Mrs. Eustace, the alleged bankrupt, to prohibit the use of said telephone by the Receiver; that thereafter said bankrupt and said Charles M. Fourl refused to permit the Receiver to use the telephone on said premises and by force and violence ejected said Receiver from said premises and by their conduct demonstrated that they would violently and forcibly resist any attempt on the part of the Receiver to re-enter said premises; that said bankrupt personally locked the door in the face of said Receiver with the keys she had in her possession at the time of his eviction.

As conclusions from the foregoing findings of fact, the Court advises that at the time of the filing of the

petition in bankruptcy herein and at the time of the appointment of said Receiver that said Katie M. Eustace was in possession and control of the business being conducted at 1246 East 9th Street, Los Angeles; that the Receiver herein is entitled to the possession of said premises and the business conducted thereon.

IT IS THEREFORE ORDERED that said E. A. Lynch, as Receiver be, and he hereby is restored to the possession of said premises and the business conducted thereon at 1249 East 9th Street, Los Angeles, and that said bankrupt and any and all persons, their agents and employees are hereby restrained as more fully set forth in the order appointing Receiver from in any wise interfering with the possession of said Receiver.

IT IS FURTHER ORDERED that said alleged bankrupt, Katie M. Eustace, wilfully and deliberately violated the order of this Court appointing a receiver in bankruptcy herein and that said Katie M. Eustace committed a contempt by reason thereof of the above Court.

IT IS FURTHER ORDERED that further proceedings against said Katie M. Eustace be, and they hereby are suspended until a conclusion of the hearing against the respondent, Charles M. Fourl.

DATED: This 13th day of September, 1934.

Geo. Cosgrave
District Court Judge.

[Endorsed]: Filed R. S. Zimmerman Clerk at 59 min past 1 o'clock Sep. 13, 1934 P. M. By L. B. Figg Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ANSWER OF RESPONDENT, CHAS. W. FOURL,
TO PETITION AND ORDER TO SHOW
CAUSE RE CONTEMPT.

Comes now Chas. W. Fourl, one of the respondents in the order to show cause in re contempt and restoration of possession, directed to Chas. W. Fourl and Katie M. Eustace, alleged bankrupt, dated and filed on Sept. 11, 1934, and signed by Honorable Geo. Cosgrave, District Judge, and makes answer to the petition of E. A. Lynch, alleged acting Receiver and to said order based thereon, and shows cause as follows:

I

That said petition and order do not, either singly or together, state facts sufficient to show or to constitute contempt on the part of this respondent.

II

That said petition and order do not, either singly or together, state facts sufficient to show or to constitute a criminal contempt on the part of this respondent.

III

That said petition and order do not, either singly or together, state facts sufficient to show or to constitute a civil contempt on the part of this respondent.

IV

That said petition and order, either singly or together, are not sufficient either in form or in substance to constitute a charge of criminal contempt against this respondent.

V

That said petition and order, either singly or together, are not sufficient in form to show or to advise this respondent whether it is intended to charge him with a civil or a criminal contempt.

VI

The order purporting to appoint said E. A. Lynch receiver does not purport to and does not in fact and in law authorize the said Lynch, as such alleged receiver, to take possession of property not owned by the alleged bankrupt, Katie M. Eustace, and does not and did not authorize or purport to authorize said Lynch to take possession of the plumbing business conducted under the name of the Eustace Plumbing Company, and did not and does not authorize or purport to authorize any of the acts of the said Lynch, alleged or referred to in the said petition for said order to show cause.

VII

This respondent denies that E. A. Lynch is the duly appointed receiver in bankruptcy in the above entitled matter. On the contrary respondent alleges that the order purporting to appoint said Lynch as receiver was made *ex parte*, without notice to the said alleged bankrupt or to any one and without any adjudication that said alleged bankrupt is in fact bankrupt, and upon a petition which does not state facts sufficient to warrant the appointment of a receiver *ex parte* or at all.

VIII

John M. Eustace and Katie M. Eustace, the alleged bankrupt, are and at all times mentioned herein and in

said petition were, and ever since 1904 have been husband and wife, and during all said period have resided in Los Angeles, California. For more than ten years prior to his said marriage to said Katie M. Eustace said John M. Eustace was engaged in the plumbing business both as a retailer and contractor. Said business was first located on Main Street in said City and then moved to No. 830 Ceres Avenue and in 1923 to 1246 East Ninth Street, in said City.

IX

The said wife has at all times since a year after her said marriage, actively worked with and for her husband in his said plumbing business, and during the past ten years he has been actively assisted therein by his son, John Eustace, Jr. Said business has been in part conducted at 1246 E. Ninth Street, Los Angeles, California, for the past eleven years; but in 1930 a second plumbing shop was opened by said John M. Eustace at 166½ North La Brea Avenue in said City in premises sublet to him by J. A. Griffith who held the lease covering said premises and subleases one-half thereof to said John M. Eustace, and who conducted his own real estate and insurance business in a part of said premises.

X

Said Katie M. Eustace does not and never has owned said plumbing business or had any interest therein except the community interest of a wife under the laws of California, nor has she ever been in possession thereof except as the wife and agent of her said husband, as herein set forth. The J. G. Stevenson mentioned in paragraph II of the said petition is a journeyman plumber who has

been employed as such in said business by John M. Eustace at various times, beginning in the year 1925.

This respondent has no knowledge of the alleged conversation between said Lynch and said Stevenson, nor of the alleged statements of the latter to said Lynch, set forth in paragraph II of said petition. But said Stevenson was at said time and place employed in part by said John M. Eustace in the capacity only of a journeyman plumber, and by this respondent as a mechanic to do mechanical work on valves and fittings belonging to this respondent and being prepared for use in this respondent's refinery under construction at Long Beach, California.

XI

This respondent likewise has no knowledge of what, if anything, was said by Raphael Dechter to said Lynch on the occasion mentioned in said paragraph II, but respondent denies that said Lynch transmitted to this respondent or to Katie M. Eustace any advice or instructions received from said Dechter.

This respondent did state to said Lynch at said time and place that he, respondent, was attorney for said John M. Eustace, that said John M. Eustace owned the said plumbing business, and that said Lynch was a trespasser; and this respondent at about 5:30 p. m. did tell said Lynch he would have to leave the premises since they were closing up. This respondent did not use either force or violence on said Lynch. This respondent is and has been for twenty-five years an attorney at law, and ever since the year 1911 has been and now is duly licensed to practice as such in the State of California.

This respondent has known said Lynch intimately for the past seven years, during which period the latter has been a professional trustee and receiver in bankruptcies, and during which period respondent has a number of times had business dealings and relations with said Lynch and when respondent informed said Lynch that the latter must leave the premises, when the same were closed up for the night, respondent placed his hand, at the request of said Lynch, on said Lynch's arm and together they walked out of the premises to the sidewalk, all without violence or force and in the most friendly spirit so far as respondent and said Lynch were concerned.

XII

Respondent denies that the alleged bankrupt, on the occasion or occasions mentioned in paragraph II of the said petition, continuously or at all threatened the said Lynch, and denies that the alleged bankrupt on said occasion or occasions stated that she was going to use all kinds of force to evict said Lynch, and denies that she stated she was going to use any force to evict said Lynch. Respondent denies that said Lynch, either as alleged receiver or otherwise was ever either in possession or in charge of the said plumbing shop. Respondent denies that said alleged bankrupt continuously ordered said Lynch to quit the said plumbing shop, but respondent admits that she did request said Lynch to leave the shop and did tell him that he was a trespasser; and in this connection respondent alleges upon information and belief that during the time said Lynch was in said shop said alleged bankrupt was advised, by telephone, by her attorney, that said Lynch was a trespasser in violation of the rights of her husband, John M. Eustace.

XIII

Respondent denies that said alleged bankrupt, during the period mentioned in paragraph II of the said petition, received any orders over the telephone and denies that she ordered such orders or any orders to be filled from a branch store or any store or at all.

Respondent denies that said alleged bankrupt stated to said Lynch or to any one, on the occasion or occasions mentioned in paragraph II of said petition, that she would not hesitate to use a gun if necessary to evict said Lynch.

XIV

Respondent has no knowledge as to what said Lynch was "advised" or told by any one present at said plumbing shop that said storeroom contained the books and/or records of said plumbing business. And respondent denies that the said storeroom was kept locked during the time that said Lynch and said alleged bankrupt were present in said shop. On the contrary respondent alleges that the said store room was left unlocked during said period.

XV

Respondent denies that said alleged bankrupt requested said Lynch "as receiver" to talk with Hiram E. Casey, her attorney. Respondent admits that said Lynch did talk with Mr. Casey over the telephone, but respondent has no knowledge as to what Mr. Casey told said Lynch. But respondent is informed and believes and therefore alleges that Mr. Casey did advise said Lynch that if he, Casey, were attorney for John M. Eustace, the husband of the alleged bankrupt and the owner of said plumbing business, that he, Casey, would advise said Eustace to

evict him, Lynch, as a trespasser; and upon information and belief respondent denies that said Casey told said Lynch that he, Casey, was going to advise said alleged bankrupt to evict him, Lynch.

XVI

Respondent denies that he forcibly or violently evicted said Lynch from the said plumbing shop and denies that he evicted said Lynch at all except as in this answer stated. And respondent denies that he forcibly resisted any attempts on the part of said Lynch to re-enter said shop. On the contrary respondent alleges that said Lynch made no efforts to and expressed no desire, by words or otherwise, to re-enter the shop. And respondent denies that said alleged bankrupt ever at any time touched said Lynch or requested this respondent to do so, and denies that she used any force or violence upon said Lynch, or that she locked the door in his face. The door was not locked until after the said Lynch was walking away to his automobile.

XVII

Respondent alleges that said Lynch knows and knew long before the commencement of the above entitled bankruptcy matter, that the said plumbing business belongs and belonged to John M. Eustace, the said husband of Katie M. Eustace and was and is familiar with the fact that at one time some years ago certain of the creditors of said John M. Eustace in the said plumbing business initiated an involuntary proceeding in bankruptcy against said Eustace in the above entitled court in which Hiram E. Casey was attorney for the petitioning creditors and in which said Lynch was an avowed aspirant for appoint-

ment as receiver or trustee in bankruptcy for said John M. Eustace, if a receiver or trustee were appointed.

XVIII

Respondent is informed and believes and upon such information and belief alleges further: that on September 10, 1934, at about 10:30 a. m. and after the alleged appointment of said Lynch as alleged receiver, and while said Hiram E. Casey was ignorant of said alleged appointment, said Casey casually met said Lynch on the street in Los Angeles, California, and thereupon said Lynch, knowing the above alleged connection of said Casey with the said bankruptcy proceedings against said John M. Eustace, stated to Casey that he, Lynch, was "going to crash" Katie M. Eustace, whereupon said Casey, ignorant as aforesaid of said appointment, immediately informed said Lynch that if he, Lynch, should be appointed receiver or get into the case he had better stay away from the said plumbing business, since he, Casey, knew from his said connection with the said previous proceedings against John M. Eustace, that Katie M. Eustace did not own the said business but that it was owned by her husband John M. Eustace and that there was on file in the county clerk's office a certificate of fictitious name showing said John M. Eustace to be the owner, and that he, Casey, was attorney for Katie M. Eustace, the alleged bankrupt. Said Lynch did not at said time advise or inform said Casey that he, Lynch, had secured an order purporting to appoint Lynch receiver.

WHEREFORE, this respondent respectfully prays that said petition and order to show cause be dismissed as to this respondent, and for such other and further relief as may be proper in the premises.

Edward W. Tuttle,
Attorney for Respondent,
Chas W. Fowl.

State of California }
County of Los Angeles } ss.

CHAS. W. FOWL being by me first duly sworn, deposes and says that he is one of the respondents in the above-entitled bankruptcy matter; that he has heard read the foregoing answer of Chas. W. Fowl, respondent and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

Chas. W. Fowl

Subscribed and sworn to before me this 20th day of Sept. A. D., 1934.

[Seal]

Edward W. Tuttle

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed Sep. 21, 1934 - 12:12 P. M. R. S.
Zimmerman Clerk By Francis E. Cross, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

In the Matter of)	
)	
KATIE M. EUSTACE, etc.,)	
)	
Alleged Bankrupt	)	No. 23770-C
)	
_____	)	(In Bankruptcy)
)	
E. A. Lynch, Receiver of	)	STATEMENT OF
Katie M. Eustace, etc.,	)	THE EVIDENCE BY
	)	CHARLES W. FOURL
Petitioner,	)	AND
	)	KATIE M. EUSTACE
-vs-	)	ON THEIR APPEALS
	)	FORM JUDGMENT
Charles W. Fournl and	)	AND SENTENCE
Katie M. Eustace,	)	FOR CONTEMPT
)	
Respondents.))	
)	

Be it remembered that on August 23, 1934, an involuntary petition in bankruptcy was filed against the above named Katie M. Eustace, upon which there has been no adjudication; that thereafter on September 7, 1934, an order was made ex parte without notice and based solely upon the original petition in bankruptcy and the petition for such order filed September 7, 1934, appointing E. A. Lynch receiver of all property of the bankrupt.

Be it further remembered that on September 11, 1934, on petition of said E. A. Lynch, an order was made

directing said Katie M. Eustace and Charles W. Fourl to appear on September 12, 1934, and show cause why they should not be adjudged in contempt for interfering with the possession of said E. A. Lynch as receiver of the plumbing shop at 1246 East Ninth Street, Los Angeles, California, and why possession of the same should not be restored to said receiver.

Be it remembered that on the 12th day of September, 1934, at 2:00 P. M. thereof, the hearing on the said petition of the said E. A. Lynch was called, the petitioner being then and there represented by his attorney Raphael Dechter, at which time the said Raphael Dechter announced to the Court that the said petition and order to show cause had not been served upon the said Charles W. Fourl. The respondent, Katie M. Eustace, was present in Court and represented by her attorney, Hiram E. Casey. Upon the call of the matter, the said respondent, Katie M. Eustace, through her attorney, Hiram E. Casey, requested from the Court, two or three days time within which to prepare, serve and file a motion directed to the petition filed by the said E. A. Lynch, which request was denied by the said Court. The said respondent, Katie M. Eustace, through her attorney, Hiram E. Casey, requested from the Court two or three days time within which to file an answer in writing to the said petition of the said E. A. Lynch, stating to the Court that the petition and order to show cause were a one-day petition and order and had just been served upon the respondent; that the said request was thereupon denied and an exception was taken by the said respondent to both the refusal of the Court of permission to file a motion and the refusal of the Court to permit the filing of a written answer to the said petition. That the Court

thereupon announced that it was busy in the trial of another matter pending before the Court and that upon the conclusion thereof during the said afternoon of the said 12th day of September, 1934, it would hear further from counsel.

Be it further remembered that at about 3:15 P. M. of the said 12th day of September, 1934, the aforesaid proceedings were again called by the Court, and that then and there the said Hiram E. Casey as counsel for the said Katie M. Eustace stated to the Court that he had not had time for preparation for trial of the said proceedings, and that he had not had time or opportunity to prepare and serve an answer in writing therein, and suggested to the Court that inasmuch as the proceedings against Charles W. Fourl in the above entitled Bankruptcy matter were of a similar nature as the proceedings against the respondent Katie M. Eustace, that it would seem advisable to continue the hearing as against Katie M. Eustace and consolidate it with the hearing to be had against Charles W. Fourl. The Court refused to accept the said suggestion and ordered the matter to proceed forthwith to trial as against Katie M. Eustace. The said Hiram E. Casey then requested a continuance of the said matter upon the grounds that he had not had time or opportunity to subpoena or procure witnesses necessary and material for the defense of the said Katie M. Eustace, then and there stating to the said Court that the witnesses he desired to subpoena and have present and testify were John M. Eustace, John Eustace, Charles W. Fourl, J. A. Griffiths and such other witnesses as might be necessary to controvert testimony offered by the petitioner with which the respondent disagreed. The Court then refused the request for con-

(Testimony of E. A. Lynch)

tinuance and ordered the trial to proceed, to which ruling an exception was taken by the said respondent. The said Hiram E. Casey thereupon made a request that a shorthand reporter or official court reporter be present to transcribe and preserve the record, proceedings and evidence to be offered or received in the proceedings. The Court then asked why a previous request had not been made for a court reporter when the case was first called. Mr. Casey replied that a request had been made at 2:00 o'clock to one of the Court attaches therefor; the Court ordered the matter to proceed without a court reporter, to which ruling an exception was taken by the respondent.

E. A. LYNCH,

the petitioner, called as a witness on his own behalf by his counsel Mr. Dechter, testified in the manner and to the effect as set forth in the Statement of Evidence on the Appeal of Charles W. Fourl, which said Statement by Stipulation and Order of Court thereon is adopted as part of the Statement of Evidence to be used on this appeal. That in addition to the testimony set forth in the Statement of Evidence in the said Charles W. Fourl appeal, the said E. A. Lynch on cross-examination stated that on the morning of September 10 he met Mr. Hiram E. Casey on Spring Street in Los Angeles about 10:30 A. M. thereof; that he stated to Mr. Casey that he had some information that he felt would give Mr. Casey a good laugh, and that Mr. Casey then asked him what it was, and Mr. Lynch replied that he was about to "crash" Katie M. Eustace in Bankruptcy, and that Mr. Casey

(Testimony of J. G. Stevenson)

then stated to him that he, Mr. Casey, was Katie M. Eustace's attorney, and that Mr. Casey then stated to him, if he expected to be Receiver, or ever became Receiver in the matter, not to bother the plumbing business on East Ninth Street, as that belonged to John M. Eustace and that Katie M. Eustace had no interest in it, and that Mr. Lynch stated to Mr. Casey that he had reason to believe that the contrary was true, and that Mr. Casey stated to him that among the records of the County Clerk's office a Certificate of doing business and fictitious name in compliance with the laws of the State of California was on file.

J. G. STEVENSON,

also called by Mr. Dechter as a witness on behalf of the petitioner E. A. Lynch, was duly sworn and testified that he was a plumber by trade and had been for many years; that he had been in the employ off and on of John M. Eustace as such for the past seven or eight years; that he was originally hired to work in the business of John M. Eustace by John M. Eustace personally; that he had been hired about two years ago by Katie M. Eustace for his present employment; that he knew Katie M. Eustace and saw her practically every day around the place of business at 1246 East Ninth Street and had been taking instructions from her since his last employment; that he had a key to the place of business at 1246 East Ninth Street; that his salary was handed to him sometimes in

(Testimony of J. G. Stevenson)

cash, sometimes by check signed by Mr. Griffith and sometimes it was handed to him by Katie M. Eustace and sometimes he paid himself from moneys on hand in the business and seldom saw Mr. Eustace around the business; that on the 10th day of September, 1934, he was present at the place of business at 1246 East Ninth Street; that at about 10:30 A. M., E. A. Lynch and two or three other men came into the storeroom of that business; that Mr. Lynch talked with him ten or fifteen minutes asking him questions concerning the business; that he thought Mr. Lynch was a prospective customer of the plumbing shop and treated him accordingly; that Mr. Lynch asked him if Mrs. Eustace owned the business and that he stated that Mrs. Eustace owned the business; that Mr. Lynch asked him if Mrs. Eustace paid him his salary and that he stated she did and that Mrs. Eustace was in charge of said business; that after Mr. Lynch *has* talked with him about fifteen minutes Mr. Lynch told the witness that he was there as Receiver in Bankruptcy of Katie M. Eustace and handed him a paper; the witness then stated that he placed the paper on the counter and that Mr. Lynch remained in the storeroom for an hour or so when Mr. Fowl and Mrs. Eustace came into the store. On cross-examination the witness stated that he did not know of his own knowledge who owned the business, and that if Mr. Lynch had asked him if John M. Eustace owned the business he would have answered yes, so far as he knew.

(Testimony of Katie M. Eustace)

KATIE M. EUSTACE,

respondent, called as a witness by Mr. Dechter, attorney for the petitioner, testified in part in the manner and to the effect as set forth in the Statement of Evidence as settled pursuant to Stipulation and Order of Court as set forth in the Charles W. Fournl appeal.

That in addition to the testimony as set forth in the aforesaid Statement of Evidence as settled in the Charles W. Fournl appeal, the said witness testified as follows:

Mr. Dechter asked the witness if she had any checks of the Eustace Plumbing Company. The witness replied she had one. Mr. Dechter asked if she had any checks signed in blank by J. A. Griffith. The witness opened her purse and produced a check payable to the Eustace Plumbing Company in a small sum of money, and also produced five blank checks signed, however, by J. A. Griffith, which said blank checks were on the Hancock Branch of the California Bank. The witness further testified that these checks were given to her by Mr. J. A. Griffith, the book-keeper for Mr. Charles W. Fournl, to be used by her in making payments on materials and supplies purchased by her for Charles W. Fournl; that the money to cover the said checks was furnished by Charles W. Fournl to the said J. A. Griffith; that at times she had received blank checks from J. A. Griffith on this bank account which she filled in for her personal use, and at times they were filled in for the use of the payment of obligations

(Testimony of Katie M. Eustace)

of the Eustace Plumbing Company; that the money to cover the checks filled in by her for her personal use and for the payment of the obligations of the Eustace Plumbing Company was furnished by John M. Eustace. She further testified that John M. Eustace had been away from the plumbing business a greater portion of two years immediately preceding, and that she, with the assistance of their son, had been managing the business during said time; that the bank account of the Eustace Plumbing Company was carried in the name of J. A. Griffith, who kept the books of the bankrupt and the Eustace Plumbing Company; that said bank account was used by the bankrupt to pay her own personal obligations as well as the obligations of the Eustace Plumbing Company; that the income received by said bankrupt from the Eustace Plumbing Company and from the property belonging to the bankrupt, and other sources, was deposited in said bank account and was used for the purpose of paying her household bills, taxes and other expenses in connection with the property owned by the bankrupt; that said bankrupt was accustomed from time to time to receive checks signed by said J. A. Griffith in blank, which she filled in at her discretion; that at the time of the hearing in court she produced, upon demand by counsel for the court, five checks signed by J. A. Griffith in blank.

At 5:30 P. M. the Court announced that it would be compelled to take an adjournment and that further proceedings in the pending matter against Katie M. Eustace would be suspended until the termination on the Petition for Contempt of the hearing against Charles W. Fourl. The Court then adjourned.

Further proceedings were had in this matter on Saturday afternoon, September 22, at about 3:00 o'clock. The matter was called by the Court and in response thereto Mr. Casey as attorney for Katie M. Eustace called the Court's attention to the fact that an Order had been entered by the Court in this matter on the 13th of September, and that it was the understanding of Katie M. Eustace and her counsel that the matter had not been fully tried or submitted, but that the further hearing thereon was to await the termination of the hearing on the Charles W. Fourl contempt, and that in view of that fact, requested the Court to vacate its Order made on the 13th of September. Mr. Casey further stated that if the said Order of September 13, 1934, in the Katie M. Eustace matter was so vacated that then in that event on behalf of Katie M. Eustace he would stipulate that the evidence offered and received in addition to the evidence received in the Katie M. Eustace matter and the proceedings had in the Charles W. Fourl matter which had just been heard by the Court might be considered as having been offered and received in the Katie M. Eustace matter, with the further understanding that the said Katie

M. Eustace should have all the benefits of all the objections made of exceptions and all the rules and exceptions thereon. Counsel for Receiver and court stated that the matter as to Katie M. Eustace had been determined but notwithstanding was willing to make said stipulation. The said stipulation and offer was thereupon accepted by the petitioner and by the Court, and that thereupon the Court made its Order vacating and setting aside its former Order filed in this matter on the 13th of September, 1934. (Said order is part of the record on appeal herein.)

Thereupon the matter was submitted for decision. The Court then found the respondent, Katie M. Eustace, guilty of contempt and the matter was continued for sentence until Monday, September 24, at 11:00 A. M.

That pursuant to the Stipulation hereinbefore mentioned that the evidence offered and received and the proceedings had in the Charles W. Fournl matter which had been heard by the Court might be considered as having been offered and received in the Katie M. Eustace matter, the following additional and supplemental evidence and proceedings which were offered and received and had in the Charles W. Fournl matter were considered by the Court in this, the Katie M. Eustace matter, which said evidence offered and received and proceedings had are as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

IN THE MATTER OF)
(
Katie M. Eustace, etc.,)
(
Alleged Bankrupt)
(

No. 23770-C

E. A. LYNCH Receiver of)
Katie M. Eustace, etc.,)
(
Petitioner,)
(
vs.)
(
Charles W. Fourl,)
(
Respondent,)
(

STATEMENT OF
THE EVIDENCE
PROPOSED BY
CHARLES W. FOURL
ON HIS APPEAL
FROM JUDGMENT
AND SENTENCE
FOR CONTEMPT

Be it remembered that on August 23, 1934 an involuntary petition in bankruptcy was filed against the above named Katie M. Eustace, upon which there has been no adjudication; that thereafter on September 7, 1934 an order was made ex parte without notice and based solely upon the original petition in bankruptcy and the petition for such order filed September 7, 1934, appointing E. A. Lynch receiver of all property of the bankrupt.

Be it further remembered that on September 11, 1934, on petition of said E. A. Lynch, and at the court's instance, an order was made directing said Katie M. Eustace and Charles W. Fourl to appear on September

12, 1934 and show cause why they should not be adjudged in contempt for interfering with the possession of said E. A. Lynch as receiver of the plumbing shop at 1246 East Ninth Street, Los Angeles, California, and why possession of the same should not be restored to said receiver.

Be it further remembered that said order was not served upon said Fowl and he was not present or represented at the hearing on said order on September 12, 1934, at which time the hearing thereon proceeded as to said Katie M. Eustace; that thereafter the time for hearing as to said Charles W. Fowl was fixed by the court for Friday, September 21, 1934, at the hour of 12:00 o'clock noon, and a copy of said order to show cause and the said petition of E. A. Lynch, was served upon and accepted by Edward W. Tuttle as counsel for said Fowl on September 19, 1934.

Be it further remembered that on September 21, 1934, at the hour of 12:00 o'clock noon, the said order to show cause came on for hearing before Honorable George Cosgrave, District Judge, as to said Charles W. Fowl only. Raphael Dechter, Esq. appeared as attorney for the petitioner E. A. Lynch, receiver, and for the court, and Edward W. Tuttle, Esq., appeared specially, as attorney for said Charles W. Fowl, and objected to the jurisdiction of the court to proceed summarily to try and determine the good faith claim of said Charles W. Fowl, as agent and attorney for John M. Eustace, of said John M. Eustace's ownership, possession and right of possession of said plumbing shop and business at 1246 East Ninth Street, Los Angeles, California. The court thereupon overruled said objection, to which ruling an exception was duly taken and allowed.

(Exception No. 1)

Charles W. Fournl, by his said attorney, thereupon filed with the court and made his motion to dismiss the said petition of E. A. Lynch and the order to show cause based thereon, upon the following grounds:

1. That said petition and order do not, either singly or together, state facts sufficient to show or to constitute contempt on the part of this respondent.

2. That said petition and order do not, either singly or together, state facts sufficient to show or to constitute a criminal contempt on the part of this respondent.

3. That said petition and order do not, either singly or together, state facts sufficient to show or to constitute a civil contempt on the part of this respondent.

4. That said petition and order, either singly or together, are not sufficient either in form or in substance to constitute a charge of criminal contempt against this respondent.

5. That said petition and order, either singly or together, are not sufficient in form to show or to advise this respondent whether it is intended to charge him with a civil or a criminal contempt.

6. The order purporting to appoint said E. A. Lynch Receiver does not purport to and does not in fact and in law authorize the said Lynch, as such alleged Receiver, to take possession of property not owned by the alleged bankrupt, Katie M. Eustace, and does not and did not authorize or purport to authorize said Lynch to take possession of the plumbing business conducted under the name of the Eustace Plumbing Company, and did not and does not authorize or purport to authorize any of the

acts of the said Lynch alleged or referred to in the said petition for said order to show cause.

In support of said motion counsel for said Fourl cited the following authorities:

Gompers v. Buck, Stove, etc. Co., 221 U. S. 418,
57 L. Ed. 797;

Michaelson v. U. S., 266 U. S. 42, 69 L. Ed.,
45 Sup. Ct. 18;

Oriel v. Russel, 278 U. S. 358, 73 L. Ed. 419;

Lamb v. Cramer, 285 U. S. 217, 76 L. Ed. 715,
52 Sup. Ct. 315;

In re: Francis, 136 Fed. 912;

In re: Falk v. Steiner, 165 Fed. 861;

Equity Rule U. S. 147.

The said motion was thereupon overruled by the court, to which ruling an exception was duly taken and allowed.

(Exception No. 2.)

Thereupon counsel for Charles W. Fourl served upon Mr. Dechter as attorney for the petitioner E. A. Lynch, and filed with the clerk, the verified answer of Charles W. Fourl to the said petition and order to show cause and requested the court to read the same.

THE COURT: I can't take time to do it, very well. You can state what you want to call my attention to.

MR. TUTTLE: I can't do that very well, if the court please, without reading the substance of the answer.

THE COURT: Now, gentlemen, this is the situation. Objection has been made that this proceeding cannot go forward because a question of title is involved. I don't

think that is a question here, not for a moment. I think the question here involves the integrity of the court's orders. My position was fully expressed to counsel the other day, I am sure, and in this proceeding the question solely depends on the ostensible ownership, that is, if it reasonably appears that this lady, defendant or alleged bankrupt, was in charge of the business, I expressed the opinion the other day that, from the evidence shown, that reasonably appeared to be the case. There was no question about that in my mind at all. Now, then, the Receiver here, according to the evidence the other day, was resisted. I think the proceeding is proper. Ultimately an upper court might find some fault with it, depending upon the distinction between a civil and a criminal contempt, but this is the only court functioning here today, of all four. Now, don't take up any unnecessary time. I do not intimate that you are doing it at all, but you will have to be prepared to speed the matter up considerably. Now, what is there, Mr. Tuttle, that you want to call my attention to that makes you think I should read the answer?

MR. TUTTLE: It is my idea, if the court please, that you can hardly try the issues involved here without knowing what the issues are, and I have set them up quite fully in the answer, and I would have to read the substance of that answer in order to properly present the matters to your Honor.

THE COURT: I am going to assume that you have denied the allegations of the citation or complaint, or

whatever it may be called. It is along the line that Mr. Fourl was merely protecting his own property, generally?

MR. TUTTLE: No.

THE COURT: Well, what else is there?

MR. TUTTLE: I have set up the facts with respect to the ownership and occupation of the property, the plumbing business known as the Eustace Plumbing Company, for the past 30 years, the fact that John M. Eustace is the husband of Katie M. Eustace, or that she is the wife, rather, of John M. Eustace; that John M. Eustace began the business some years before he married her in 1904.

THE COURT: Now, that means that somebody else owned the property. That is what I stated a moment ago. There is no necessity of going into that.

MR. TUTTLE: I make the contention in the answer that Katie M. Eustace was not, and never has been, in possession of the property, except as the wife of John M. Eustace.

MR. DECHTER: We are willing to meet that issue, your Honor.

THE COURT: Proceed. I can't take any further time, Mr. Tuttle.

MR. TUTTLE: Yes. May I note an exception to your Honor's refusal to read my answer?

THE COURT: Yes.

(Exception No. 3)

(Testimony of E. A. Lynch)

DIRECT EXAMINATION OF E. A. LYNCH
E. A. LYNCH,

the petitioner, called as a witness on his own behalf by his counsel Mr. Dechter, testified on

DIRECT EXAMINATION

as follows:

I am the receiver of the alleged bankrupt, Katie M. Eustace. On Monday morning September 10, 1934, I proceeded from my office to 1246 East Ninth Street, on the premises known by the name of the Eustace Plumbing Company, accompanied by W. D. Hunt and John Keenan. We entered the premises at 11:45 and found a Mr. Stevenson working on a grinding machine reconditioning second-hand machinery. Approaching Mr. Stevenson, we asked him who was in charge, and he said, "I am the only one here so I guess I am in charge."

MR. TUTTLE: I move to strike the statement of the witness as to the conversation which he had with Stevenson, whom he found there on the premises, on the ground that it is hearsay and incompetent for any purpose as to the respondent Fourl; that it couldn't establish any of the facts which Stevenson purported to state, and could not found any basis upon which the Receiver or the alleged Receiver would be authorized to proceed.

THE COURT: Overruled.

MR. TUTTLE: Note an exception.

THE WITNESS: I asked Mr. Stevenson—

MR. TUTTLE: Just a moment. Does your Honor treat that as an objection to the testimony and not too late for consideration?

(Testimony of E. A. Lynch)

THE COURT: It is all accorded that classification, and it will be deemed that the objection runs to all of the testimony.

MR. TUTTLE: Of that character?

THE COURT: Yes.

MR. TUTTLE: May we have an exception to all that class of testimony?

THE COURT: Yes.

(Exception No. 4)

The witness Lynch continued his direct testimony as follows:

I asked Stevenson where Mrs. Eustace was, and he said he didn't know, but that she usually arrived about 10 o'clock in the morning. I said, "Where is Mr. Eustace," and he said, "I don't know; I haven't seen him for more than a year." I said, "Well, who is the owner here?" Mr. Stevenson said, "Well, as far as I know, Mrs. Eustace is the owner." I then walked up to Mr. Stevenson and handed him a certified copy of the order appointing me receiver. He looked at it and said, "I don't know what this is all about, and I will lay it over here on the counter," which he did, about ten feet away from the place where I handed it to him, and he said, "I will leave it there until Mrs. Eustace comes."

Q Did anybody prevent your taking possession of those premises, Mr. Lynch?

A No.

MR. TUTTLE: I move to strike that answer, on the ground that it calls for a conclusion.

(Testimony of E. A. Lynch)

The court denied said motion and an exception was duly taken to said ruling.

(Exception No. 5)

The witness Lynch continued as follows:

Between 12:30 and 12:45 Mr. Stevenson was still on the premises and Mr. Hunt and Mr. Keenan were there. Mr. Hunt is a gentleman that is employed in my office, and Mr. Keenan is employed in my office from time to time in matters of this kind. As I stated, between 12:30 and 12:45, a car drove up to the front of the building, and Mr. Foulr and Mrs. Eustace alighted, and she came into the premises, and I was standing at the counter in the rear part of the store, and as she came in I said, "Mrs. Eustace?" and she said, "Yes," and I said, "I have a paper for you," and I handed to her a certified copy of the order appointing receiver. About, I should say, a minute or two after that Mr. Foulr followed her in, and he said, "What are you doing here?" I said, "Well, I am the Receiver and in possession." He stated, "Well, you have no possession here. This is the property of my Client, John Eustace." I said, "I have information that leads me to think otherwise, and I am going to remain in possession." And we had what I might say was a rather friendly argument. I stated to Mr. Foulr, "I am going to stay here," and he said, "Well, you are not; I am and you are not." So then the balance of the afternoon was spent in conversation on various matters, but from time to time Mrs. Eustace stated that I was not going to stay on the premises, and repeated that statement to two gentlemen that came in subsequently, Mr. Ben Stern, whom I had sent for to act as night watchman, and to Mr. George Dyer, whom I had sent for also. During the

(Testimony of E. A. Lynch)

course of the afternoon, or about 1 o'clock, I should say, I stated to Mrs. Eustace that, "I now make demand for all the books and records and keys to this premises," and Mr. Fourl spoke up and stated that there were no books or records. Mrs. Eustace very shortly thereafter went up the stairs onto the mezzanine floor and unlocked the offices of the business. I did not follow her up, but she came down again, and later in the afternoon, when I decided that I would make some attempt to go up the stairs, after due consideration, Mrs. Eustace came down, after answering a telephone call, and we were grouped about at the foot of the stairs, and Mr. Hunt and myself both offered Mrs. Eustace a chair to sit down in, and she said, "No, thank you; I will sit here," and she takes a newspaper and spreads it on the stairs and sits down on the stairs. Then in a conversation a little later I said to Mr. Fourl, "I wonder what Miss Wagner would say if she knew that I was down here as Receiver." Miss Wagner, may I explain here, is the secretary of Mr. Fourl. When this was mentioned Mrs. Eustace said, "Miss Wagner—she is the one who is at the bottom of this whole thing. She is the one that has caused all this trouble, and she is working with Mr. Dechter, trying to get this bankruptcy proceeding through." I dropped the conversation then, and Mrs. Eustace continued—or repeatedly reviled Mr. Dechter for his activities in this matter, and referred to other bankruptcy matters that he had participated in over a period of a year, and stated that he was the type of a man that she wouldn't hesitate to shoot down, and after she shot him that she would not consider that she had committed a murder. She said, "Further-

(Testimony of E. A. Lynch)

more, I have no fear of the law. I have no fear of any man or any woman or child, and I would *us* a gun to defend my rights, no matter what happened." The balance of the afternoon was spent in discussing various subjects pro and con, and when 5 o'clock arrived, or 10 minutes after 5, I stated to Mr. Fowl, "Well, is this going to turn out to be a New Years Eve watch party? We are all sitting around here." And he said, "Well, we are waiting to hear from Mr. Casey. He has been away on a picnic and won't get here until 5. And so 10 minutes after 6 I said, "Call up Mr. Casey," and Mrs. Eustace said, "Yes, call him up," and I said, "No, I want you to call him up." So Mrs. Eustace got on the phone and called Mr. Casey and stated that I was there and claimed possession of the premises. I, of course, couldn't hear Mr. Casey's conversation, but Mr. Fowl, in answer to it, said, "Yes, I consider that this is the business of Mr. Eustace, and Mr. Lynch is here as a trespasser and interloper," and I got on the phone and spoke to Mr. Casey, and I said, "Mr. Casey, I would like to call up Mr. Dechter on this matter before we get excited about it," He said, "No, you can't use that phone. Go outside and *us* a phone, and put Mr. Fowl on the phone." So Mr. Fowl took the phone again and had a conversation with Mr. Casey, and then he turned to me, and he said, "You can't use this phone, and you will have to vacate the premises." I said, "Well, Mr. Fowl, I am in possession, and you will have to put me out." So he finished his conversation with Mr. Casey, and I was back by the telephone and made a gesture to use it, and he stood in front of it, and I walked out through a little doorway into the

(Testimony of E. A. Lynch)

main display room of the premises, and he, as I say, finished his conversation with Mr. Casey, and he said, "Well, come on," and he put his arm around me, his right arm around my back, and his right hand on my wrist, and his left hand on my left forearm, and pushed me to the door, and, as I got to the door, he raised his knee to my back and gave me a little lift out of the door. Then I turned around, after the other gentlemen followed out that I had there, and Mrs. Eustace pulled a key out of her bag, or perhaps she had it on her finger; I refreshed my memory this morning, that all during the afternoon she had several keys on a ring and had them on her finger during the entire afternoon; and she turned around and locked the door and drove away.

She didn't get the key from Mr. Fowl. I told Mr. Fowl that I was in possession, and during the afternoon he told me that all the second-hand valves and gates and equipment used in a large refinery were used property and that he could show title to it, having bought the material from the Marine Engineering Company of Long Beach. I said, "Mr. Fowl, I am in possession, and you can take the proper procedure to recover this by bringing an order to show cause."

CROSS EXAMINATION OF E. A. LYNCH

On

CROSS-EXAMINATION

by Mr. Tuttle, attorney for Charles W. Fowl, the witness E. A. Lynch testified as follows:

My business is handling bankruptcy matters.

Q For how long?

(Testimony of E. A. Lynch)

THE COURT: Strike out such examination and get to the point here, Mr. Tuttle, or else I will examine the witness myself.

MR. TUTTLE: I note an exception to your Honor's refusal to permit that examination.

THE COURT: Yes. Go ahead.

(Exception No. 6)

MR. TUTTLE: I desire, if the court please—

THE COURT: The court knows that Mr. Lynch, the gentleman on the witness stand, has been a receiver in matters in the Federal Court time and time again. That was why he was appointed in this case, was because of the court's knowledge of Mr. Lynch, Mr. E. A. Lynch.

Q. BY MR. TUTTLE: How long have you known Mr. Fowlr?

THE COURT: Mr. Tuttle, I want you to appreciate what I have been saying here. I want this matter confined to the essentials. His acquaintance with Mr. Fowlr would make no difference whatever. What I want to know is this: Was there a putative authority or possession on the part of the alleged bankrupt, and was the possession of the Receiver interfered with? Nothing else is relevant or material.

MR. TUTTLE: If the court please, I don't desire to be disrespectful to the court. I want to proceed and defend my client here to the best of my ability, and I think in fairness I should be permitted to make such examination as would not alone concern itself with certain actual facts, but—

THE COURT: What relevancy would the time of his acquaintance with Mr. Fowlr have to do with the question?

(Testimony of E. A. Lynch)

MR. TUTTLE: The witness is endeavoring to give the impression that Mr. Fourl used force and violence upon him. That is one of the allegations of the petition.

THE COURT: Yes. Well, Mr. Tuttle, would the extent of his acquaintance throw any light on that?

MR. TUTTLE: I think it would, if the court please, because I expect to prove, to offer evidence to show that, as a matter of fact, Mr. Lynch and Mr. Fourl were and had been for a long time very friendly and intimate acquaintances.

THE COURT: The question is disallowed. Take your exception. Proceed.

MR. TUTTLE: Note an exception, please.

(Exception No. 7)

THE COURT: Any further questions?

MR. TUTTLE: Yes, I have.

Q BY MR. TUTTLE: Before you went down there on the day in question, down to East Ninth Street, Mr. Lynch, did you have a conversation with Mr. Hiram E. Casey?

MR. DECHTER: To which we object, on the ground that it is not proper cross-examination.

THE COURT: Sustained.

MR. TUTTLE: If the court please, we desire to show the knowledge of this Receiver before he ever acted to take possession of that property that that property was not in the possession of Katie M. Eustace, as a matter of fact or law, and that the property belonged to her husband, John M. Eustace, and never had belonged to Katie M. Eustace.

THE COURT: Mr. Tuttle, the court expresses the opinion that if a Receiver or an officer of the court were

(Testimony of E. A. Lynch)

to be guided or affected by what counsel told him as to the facts in cases he would never get anywhere. I think that is evident to anybody. That fact would mean nothing at all. The objection is sustained. The ruling has already been made, however.

MR. TUTTLE: We note an exception.

(Exception No. 8.)

THE COURT: Yes. There is nothing before the court right now.

MR. TUTTLE: In order that the record may be clear, and that our exception will have some value, we offer to show by this witness that he did have a conversation with Hiram E. Casey, and that in that conversation Mr. Lynch told Mrs. Casey that he was going to crash Katie M. Eustace, and that in that conversation Mr. Casey told Mr. Lynch—

THE COURT: Now, don't make it too long. Mr. Casey gave the witness notice, or made the statement to him that Mrs. Eustace didn't own the property—that is the substance of it?

MR. TUTTLE: Not entirely. He advised Mr. Lynch not to meddle with the plumbing business if he should be appointed Receiver, because that did not belong to Mrs. Eustace, but belonged to her husband, John M. Eustace, and had always belonged to him.

THE COURT: That is enough. Proceed.

MR. TUTTLE: In connection with that offer, I want to add this further fact, that that conversation occurred before he went down to East Ninth Street to the plumbing shop, on the occasion in question, which he has described.

(Testimony of E. A. Lynch)

The witness Lynch further testified on Cross-examination as follows:

When I handed Mr. Stevenson the paper which I testified I gave him, I said "Mr. Stevenson, I am serving you with this order appointing Receiver." He looked it over and said, "Well, I don't know what it is all about, and I am going to leave it over here," He did not hand it back to me. During my conversation with Mrs. Eustace she did not make any threats to me personally. She did not have a gun in her possession, that I know of, nor did she say that there was any gun there. She never at anytime while I was there laid her hand on me. She said we were not going to stay there. She said that that business belonged to her husband. When Mr. Fourl first came in he told me that the business was John M. Eustace's business and that he, Fourl, was the agent and attorney for John M. Eustace. Mrs. Eustace handed a copy of the order of appointment to Mr. Fourl a few minutes after she glanced over it.

The mezzanine floor or balcony of the plumbing shop was open from the main display room in front. During the conversations I have described I was all through the main floor of the building. Access to the mezzanine floor is reached by a stairway that leads from the work room in the rear. During most of the conversation I was located at the foot of the stairway in the work room. Sometimes I walked to the front display room. Our conversation throughout the afternoon was in a friendly spirit, discussing the reconditioning of various parts of machinery and the methods used, and so forth. I said to Mr. Fourl "Well, where did you get all these valves, and

(Testimony of E. A. Lynch)

so forth," and he said, "I bought them from the Marine Engineering Company, and they got them," as I understood it, "from some place up in Owens Valley," and I said, "It looks to me like it might have come from the Clark Chemical Company," because it was covered with a white caustic soda, and he said, "Yes, I believe that is where it came from."

I told Mr. Fourl I was in possession and that as long as I was in possession nothing should be removed from the premises. I had an idea that Mrs. Eustace had an interest in that property there—some working interest, perhaps, with Mr. Fourl. I did not express any such idea to Mr. Fourl or Mrs. Eustace, nor did I inquire from them whether she had any such interest. Mr. Fourl told me he was building a refinery in Long Beach and that part of this material was to be used in that refinery. Mr. Stevenson was working on this material.

When Mr. Fourl took me by the arm and we walked to the front door, when we got ready to go out, I did not use any great resistance but I did resist to the extent that he had to urge me out of the door. I said "Mr. Fourl, if I am to go out of this place you will have to put me out." I have no recollection as to having suggested to Mr. Fourl that I would go out if he placed his hand on me. I said to him, "Mr. Fourl, if you put me out you will have to take hold of me and put me out." Yes, I perhaps smiled about it when I said it, and Mr. Fourl also smiled. When we went out together with Mr. Fourl's arm around me I certainly considered I was being thrown out, so far as physical violence is concerned. I felt that Mr. Fourl was very determined that I should

(Testimony of E. A. Lynch)

go out, and that if I had used any physical resistance, that there would have been a scene created there that would have involved a lady, and I felt that if such a scene took place or such an affair took place, that Mrs. Eustace, who is, in my estimation, a very temperamental woman, might thrust herself into the fray, and that would be conduct that I felt would be unbecoming an officer of this court. I did have two other men there with me at the time and we were there for the purpose of holding possession.

By my statement in my petition that Mrs. Eustace locked the door in my face I mean that she locked the door while I stood there. She used no violence toward me in doing that. I was walking away out to the sidewalk when the door was locked.

MR. TUTTLE: I do not wish to do anything contrary to your Honor's ruling. But there is another matter which I desire to offer to show by this witness, and that is the fact that he knew, in the course of his business, of the existence of a proceeding in this court, a bankruptcy proceeding, against John M. Eustace, filed by his creditors in the plumbing business at the East Ninth Street location, and that he was aware that no claim had ever been made that Katie M. Eustace owned that property, but that it was the property of John M. Eustace, that bankruptcy proceeding being—

MR. DECHTER: If the counsel wishes to make the witness his own witness for the purpose of going into those matters—

MR. TUTTLE: No; that isn't my purpose. My purpose is cross-examination to show the knowledge of this witness before he ever went down there, that there was

(Testimony of E. A. Lynch)

no basis whatever for the claim that Katie M. Eustace was in possession of that property in any sense of the term, and that she was not the owner of it.

THE COURT: What do you say to this statement, which I understand is admitted, that Katie M. Eustace had the keys to the premises?

MR. TUTTLE: My answer to that, if the court please, is that not alone did she have a key to the premises, but that Stevenson, the plumber, had a key to the premises, and numerous other people, and that, simply as a matter of convenience, she was there, as the agent and employee of her husband.

THE COURT: Now, the man inside said that he was employed by her, acting under her instructions. The evidence shows that she was running the business, that is, she was paying the bills of the business. The money was in the name of another party altogether, who apparently had no interest at all in it, and she was paying the bills, and carried in her possession half a dozen signed checks. Now, gentlemen, I think you had better recognize the obvious here. Under such circumstances it would be a reproach, it seems to me, to a court, to say that people could forcibly or in any manner prevent a Receiver of this court from taking possession of the property. The Receiver wasn't going to eat the property; he wasn't going to destroy it. There is an orderly process for adjusting all these matters. You are at liberty, of course, to show the amount of force used, and all that sort of thing, but I simply ask all the counsel in this case, out of respect to the position that the court is in, the calendar here, to hurry this matter here and

(Testimony of E. A. Lynch)

present it upon its merits, in other words, admit the facts. Here we are doing the same thing now that we did a few days ago, going over the same ground, which is made necessary—I will not say who is to blame for that. Proceed with the examination.

MR. TUTTLE: If the court please, I desire first to move to strike the statements of the court with respect to what the evidence shows here, other than such evidence as has been adduced on this hearing. Does the court grant the motion?

THE COURT: No, the court doesn't grant the motion. The court hasn't made any statement of evidence, other than what developed at the previous hearing.

MR. TUTTLE: That hearing we were not represented at.

THE COURT: No, I know you were not. Any further questions?

MR. TUTTLE: May I take an exception to your Honor's ruling?

THE COURT: Yes.

(Exception No. 9)

MR. TUTTLE: I want, in connection with the statement I was making there with respect to the prior bankruptcy proceeding against John M. Eustace, to include the number of that case in this court. It was case No. 9568-M, in the matter of John M. Eustace, Alleged Bankrupt.

THE COURT: That will be made part of your original offer.

MR. TUTTLE: It will not be necessary for me to ask the witness any questions with respect to that, in order to complete my offer?

(Testimony of E. A. Lynch)

THE COURT: No.

In that conversation I had with Mr. Casey over the telephone from the plumbing shop, he told me I had no business in the premises there and that I was a trespasser and that he advised Mrs. Eustace to eject me as a trespasser. He may have told me that if he were attorney for John M. Eustace he would advise that I be ejected, but I don't recall it that way. There was so much conversation going on all afternoon that it is hard to recall everything that was said. That conversation took place between 5:40 p. m. and 5:50 p. m. September 10th.

Q Did you know that Katie M. Eustace and John M. Eustace were husband and wife?

A I was told that.

Q And you had known that for a long time, had you not?

A Only what I was told.

Q I understand, but you had been informed long before your appointment that that was the fact?

A No, I had no information to that effect. I never knew of Katie M. Eustace until this matter happened.

Q Weren't you very familiar with the Eustace matters involved in this prior bankruptcy of John M. Eustace?

MR. DECHTER: I object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

THE COURT: Sustained.

MR. TUTTLE: Note an exception.

THE COURT: Yes.

(Exception No. 10)

(Testimony of E. A. Lynch)

The witness E. A. Lynch, on cross-examination further testified as follows:

I knew nothing about the capacity in which Mr. Stevenson was acting there or was employed there, other than what he told me. He was the only person there. When I first entered the premises we walked in and looked around and inquired, as I stated before, for Mrs. Eustace and Mr. Eustace. I was inquiring for Mr. Eustace because I wanted to find out who was in possession, in control.

Q Didn't you already know that Mrs. Eustace was in possession and control?

A Yes.

Q Then why did you inquire for Mr. Eustace?

MR. DECHTER: To which we object, on the ground that it is argumentative.

THE COURT: Sustained.

MR. TUTTLE: An exception.

(Exception No. 11)

The witness on cross-examination continued as follows:

I didn't inquire of Mrs. Eustace for Mr. Eustace. I simply said this, "Mr. Stevensen, where is Mr. Eustace," and he said, "I don't know; I haven't seen him for more than a year."

Q How did you know there was a Mr. Eustace?

THE COURT: I don't think that that is important Mr. Tuttle.

MR. TUTTLE: If the court please, the witness has testified that he had—

THE COURT: Now, Mr. Tuttle, I have indicated my views, and I may be wrong, just as likely as not. But

(Testimony of E. A. Lynch)

apparently you do not contend really, in your zeal—I am not blaming you for it, but nevertheless I think it is unnecessary. As I say, the important point, in my view, is the ostensible ownership or authority of Mrs. Eustace there. I think that is the only thing.

MR. TUTTLE: If the court please, we think the examination I have made there is directed to that issue.

THE COURT: Well, I don't think so. It wouldn't make any difference what previous knowledge he had. If he went down there and found somebody, in the manner described a while ago, I would think that would be enough, under the circumstances.

MR. TUTTLE: Well, we note an exception to your Honor's position.

THE COURT: Very well.

(Exception No. 12)

The witness on cross-examination continued as follows:

Mrs. Eustace was not there when we first came up and entered the building. She came about half an hour after I showed the order to Stevenson.

MR. TUTTLE: I have no desire to impede speedy process here, but we feel that we are being rushed a little, if the court please. It is an important matter to us, and there are possibilities of penalty and fine involved here, and we think we should have a reasonable opportunity to present the evidence.

(Testimony of E. A. Lynch)

THE COURT: Now, Mr. Tuttle, you were here the other day, I believe, and you listened to the testimony.

MR. TUTTLE: If the court please, I am obliged to disagree with your Honor. I was not present at the hearing.

THE COURT: Well, all right. We will not go into it. But when you say that you are rushed, I think your clients could have been here at that time, and not impose upon this court the necessary of threshing this straw over twice. I respectfully suggest to you that I don't think there is any rushing that has been done here. That I say in all candor and fairness. Have you any further questions?

MR. TUTTLE: Of course, if the court please, at the hearing that was held here at which I was not present there was no reporter present at that time, and we have no record of it.

THE COURT: I don't care to go into that at all. Mr. Dechter, any further questions?

MR. DECHTER: No questions at all, Mr. Lynch.

MR. TUTTLE: May I note an exception to your Honor's last ruling?

(Exception No. 13)

THE COURT: I understand that you have no further questions to ask of Mr. Lynch?

MR. TUTTLE: Well, under your Honor's rulings, I don't understand how I can ask any more questions.

(Testimony of E. A. Lynch)

THE COURT: Go on.

MR. TUTTLE: There is one more question that I would like to ask Mr. Lynch.

THE COURT: Very well.

In response to further cross-examination by Mr. Tuttle the witness Lynch testified as follows:

On the day I went down to the plumbing shop on East Ninth Street I was not shown a copy of a certificate of fictitious name filed in the county clerk's office by John M. Eustace doing business as the Eustace Plumbing Company. I did see one up at the La Brea Street store a few days ago, and that one stated that John M. Eustace was doing business in two places in Los Angeles with no addresses. It is true that while I was there on East Ninth Street on September 10, this notice was read to me over the phone, of John M. Eustace doing business as the Eustace Plumbing Company in two places in Los Angeles, without any addresses. His residence address was given. The notice was read to me by one of my agents that I sent out to the La Brea Street Store. I had information that there were three stores; that there was one on Ceres Street. I had no knowledge except that there were three addresses; that is all. Mr. Dechter gave me the addresses after my appointment as receiver and before I went down to the East Ninth Street Shop. I had those addresses as to where the Eustace Plumbing Company was doing business and I went down to the East Ninth Street address. I knew they were at that address. I found out later from a man I sent over to the Ceres Avenue address that they had not been there for several months.

(Testimony of Katie M. Eustace)

DIRECT EXAMINATION OF KATIE M. EUSTACE
KATIE M. EUSTACE,

the alleged bankrupt, was called by Mr. Dechter as a witness on behalf of the petitioner E. A. Lynch, and was duly sworn as a witness.

MR. TUTTLE: At this juncture we respectfully inquire of the court whether the court regards this as a civil or a criminal proceeding, whether it is the purpose to punish for a civil contempt or a criminal contempt.

THE COURT: It is punitive, whatever inference you may draw from that. Go ahead with the witness.

To which ruling an exception was duly taken and allowed.

(Exception No. 14)

The witness Katie M. Eustace then testified on direct examination by Mr. Dechter, as follows:

I am a housewife and I assist Mr. Eustace in his plumbing business. I have helped sell and I answer telephone calls and assist in a general way. I get prices and help buy merchandise. I don't know how much money Mr. Eustace has drawn out of the business in the last year. I don't know how much money I have drawn out of the business in the last year. My son and I are not the only ones who have drawn money out of the business in the last two years. Mr. Eustace has drawn money; I don't know how much. Mr. Griffith has done the depositing of the money. I did not give Mr. Griffith the money. Whatever checks were delivered or mailed to the shop I would give to him to deposit. When I got cash sometimes I would hand it to Mr. Eustace, sometimes I

(Testimony of Katie M. Eustace)

would hand it to the boy, and sometimes I would hand it to Mr. Griffith, and sometimes I would keep it; I would use it. Mr. Griffith has handed me blank checks signed by him and I have filled them in. At the last hearing on the citation against me for contempt I testified I had some Eustace Plumbing Company checks in my pocket-book and I did and you saw it. I produced three or four blank checks signed by Mr. Griffith that Mr. Griffith had given me that morning. I have sometimes used checks given me by Mr. Griffith, signed in blank, for paying my personal expenses. I have filled in such blank checks to pay for obligations incurred by me in drilling an oil well at Baldwin Hills with Mr. Kupfer. The money for these oil well expenditures was placed with Mr. Griffith by Mr. Kupfer's instructions. Mr. Kupfer instructed Mr. Griffith to keep the books and sometimes there would be something that would have to be bought, and we didn't know just what the price of it would be, and Mr. Griffith would give Mr. Kupfer and give me blank checks, signed with his name, and sometimes to Mr. Kupfer. Mr. Stone was one of the men who gave Mr. Kupfer the money to put in the bank account. I didn't know Mr. Stone's full name. Mr. Kupfer got the money from him. Mr. Stone lives out on Martel Street. The check for \$2600. dated October 12, 1933 drawn on the Melrose-La Brea Branch of the Bank of America, signed by J. A. Griffith and the balance of the check is written *in* in my handwriting. The endorsement on the back is mine. It is made out to the Mission Refineries, Inc. I don't know how much money I paid to the Mission Refineries, Inc. in the last two years. It is just whatever checks Mr.

(Testimony of Katie M. Eustace)

Fourl gave Mr. Griffith to deposit and pay for this stuff and those checks were all made out to Mr. Griffith and signed by Mr. Fourl. I had no interest in the Mission Refineries, Inc. I couldn't tell approximately how much. It would be a guess on my part. We would go down there and look at an item and if Mr. Fourl wanted it, and if I knew what the price would be, he would give Mr. Griffith a check for it. Mr. Fourl would write out a check to Mr. Griffith and Mr. Griffith would deposit it and Mr. Griffith would give me a check in blank and I would write the check and turn it over to the Mission Refineries, Inc.

The check shown to me drawn on the Bank of Italy, Melrose-La Brea Branch, dated October 16, 1933, to Daniel Clark for \$250. and with the endorsement on the back "Credit to the Account of Katie M. Eustace," and endorsed, "Katie M. Eustace" and "Daniel Clark" was a check given to Mr. Clark for \$250 cash, which he handed to me. The only bank account that the Eustace Plumbing Company had was the bank account carried in the name of J. A. Griffith. That is the way Mr. Eustace wanted it. It is true that I would make personal purchases and pay for them by checks signed by Mr. Griffith on this same bank account in which the Eustace Plumbing Company carried its income. I don't know anything about the check stubs now shown to me or the notations on those stubs. I don't know what the notation with respect to a check issued on April 13, 1934, to Charles Farmer, "For K. W. E.—C. W. F." means. I don't know what the notation on the stub of March 27, 1934 "E.—4460" and "G.—3587", means. It looks like

(Testimony of Katie M. Eustace)

Mr. Griffith's writing but I couldn't swear to it. Neither do I know what the notation immediately following, "E.—6960," means. I had not been paying from time to time to the Labor Commission of the State of California for unpaid labor on this well, at Baldwin Hills. I was never directed by the Labor Commission to make payments. I never used this bank account of J. A. Griffith to pay for attorneys fees to I. Henry Harris. There have never been any attorneys fees paid.

The three checks dated May 28, 1934 for \$25, March 27, 1934 for \$50, and April 20, 1934, for \$2.75 signed James A. Griffith drawn on the Hancock Park office of the California Bank, all made out to Katie M. Eustace, all endorsed "Katie M. Eustace," two of them bearing the subsequent endorsement "Division of Labor, Statistics, and Law Enforcement," do not bear my endorsement. It is not my handwriting and it is not Mr. Griffith's handwriting. The check is made out in Mr. Griffith's handwriting. If Mr. Griffith had endorsed my name on the back he would have put his initials under it. I never went to the Division of Labor, Statistics, and Law Enforcement in the State Building in Los Angeles and delivered any checks to them. I was there once with Mr. Kupfer and Mr. Harris, my attorney. I never mailed any checks to the Labor Commission. Mr. Griffith told Mr. Harris that he was going to borrow some money and he was going to send in some money to this Labor Commission and I wanted them to go to trial on it; I wanted Mr. Harris to go to trial on it.

The check shown me, dated April 20, 1934, made out to Katie M. Eustace contains my endorsement on the

(Testimony of Katie M. Eustace)

back of it above the endorsement, "Broadway Department Store".

MR. DECHTER: I will offer these three checks, together, your Honor.

MR. TUTTLE: We object to them, on the ground that there is no sufficient foundation laid to connect them up with this witness in any wise.

THE COURT: Admitted in evidence.

To which ruling an exception was duly made and allowed.

(Exception No. 15)

(Whereupon an adjournment was taken until Saturday, September 22, 1934, at the hour of 9:30 o'clock A. M.)

On Saturday, September 22, 1934, at 9:30 A. M. the following proceedings were had:

THE COURT: Proceed.

MR. DECHTER: Mrs. Eustace, please.

THE CLERK: Your Honor, there are two orders to show cause in this matter and I am not clear whether Mrs. Eustace is testifying in the order to show cause directed to her or the order to show cause directed to Charles W. Fowl.

MR. DECHTER: As I understand, we are proceeding now only against Mr. Fowl and not on the matter against Mrs. Eustace. That was my understanding.

THE COURT: Wouldn't it be possible to consolidate the matters?

MR. DECHTER: The matter that we are now proceeding against Mr. Fowl on has already been heard by

(Testimony of Katie M. Eustace)

your Honor and decided by your Honor, as against Mrs. Eustance. The order to show cause against Mrs. Eustance is for not turning over the proper keys to the Receiver.

THE COURT: Yes.

MR. DECHTER: It is a different matter entirely.

THE COURT: All right, proceed.

The direct examination of Katie M. Eustace was resumed and she testified as follows:

I have always had a key to the premises on East Ninth Street. The key which I produced on the hearing of the contempt charges against me is the only key I have ever had. I opened and closed the premises when I felt like it. I don't remember what Mr. Stevenson said when he testified at the previous hearing on the charge against me. I did not hire him the last time he was employed at the East Ninth Street Shop. He has worked there off and on for the last three or four years. The last time he came back to work he did talk to me about going back to work. He did not talk to me about salary. That was not discussed between us. He collected money and would turn in a slip at the end of the week. He asked if that was all right. He had asked Mr. Eustace before. He asked me if that was satisfactory and I said, "That is all right, John Doesn't care." I don't remember whether I ever filed an income tax return. I did not buy a bailer from the S. R. Bowen Company. I didn't buy anything from them. I have not been making payments to the L. A. Creditmen's Association on a bailer that was sold to the Eustace Plumbing Company. I went to the office of the L. A. Creditmen's Association at 111 West Seventh Street because some man in there wrote us a letter,

(Testimony of Katie M. Eustace)

wrote a letter to the Eustace Plumbing Company about some bailer that Mr. Allen had borrowed from the Bowen People for the well at Baldwin Hills, that Mr. Kupfer and I were drilling as partners. They mailed a bill to the Eustace Plumbing Company for it and we returned the bill. Mr. Griffith has made payments on that bill at the request of Mr. Harris, my attorney.

Q BY MR. DECHTER: I will show you a document from the bank check records of Mr. Griffith, what appears to be a reconciliation statement, and which I have just shown counsel, which has the following notations:

“321.78 K. M. E., paid out March;

“178.34 K. M. E., paid out April 1st;

“168.49 K. M. E., paid out May;”

and has similar entries for June and July; and then it has entries:

“K. M. E. Paid in March 76.31;

“K. M. E. Paid in April 37.00;

“K. M. E. Paid in May 170.00;”

Do you recognize that handwriting?

A It looks like Mr. Griffith's.

“K. M. E.” are my initials but I don't know who he means it for. Those amounts are not amounts of money put in Mr. Griffith's account by me. There was nothing of that amount paid out for me.

MR. DECHTER: I would like to offer these in evidence, your Honor.

MR. TUTTLE: We object to them on the ground there is no sufficient foundation laid. It is an assumption that they are taken from Mr. Griffith's records.

(Testimony of Katie M. Eustace)

THE COURT: Overruled.

To which ruling an exception was duly taken and allowed.

(Exception No. 16)

The witness further testified on direct examination as follows:

I have never had Mr. Griffith prepare an income tax return for me. Up until about six years ago I had no income to report. The last time I saw any copy of an income tax return prepared for me was the one prepared by Mr. Reed, the auditor. I don't know his first name. I couldn't tell you what office building he is in but I can get his address for you. It may have been four years ago; I am only guessing.

CROSS-EXAMINATION OF KATIE M. EUSTACE

On cross-examination, by Mr. Tuttle, attorney for respondent Charles W. Fowl, the witness, Katie M. Eustace, testified as follows:

Mr. Kupfer, one of the petitioning creditors in this bankrupt proceeding against me, and I were engaged in drilling an oil well at Baldwin Hills as partners. Money was paid out of the account of J. A. Griffith for expense in connection with that oil well. The money that was put in Mr. Griffiths account for the oil well came from different people that bought percentages in the well. Mr. Kupfer wanted Mr. Griffith to keep the money. From time to time requests were made upon Mr. Griffith by me or by Mr. Kupfer for checks or money which he held in his account from the deposits from these various persons who bought percentages, to pay expenses of the

(Testimony of Katie M. Eustace)

operations on the oil well. I can't tell offhand how much money was deposited with Mr. Griffith and applied on the oil well but it was probably approximately seven or eight thousand dollars. The net profits made in the conduct of the Eustace Plumbing Company during the last year or two years I don't believe will average \$100 a month. There was no business of any consequence during the last year or two at East Ninth Street. The business there had dwindled off to almost nothing. Most of the business that was being done by the Eustace Plumbing Company was being done at the shop at 166½ La Brea Avenue, Los Angeles. My Husband, John M. Eustace, was active in the business. He was out there at the La Brea Shop, directed the boy, helped him. By the boy, I mean our son, John Eustace, who has been active in the business with his father for the past nine years. The part of the business of the Eustace Plumbing Company which I endeavored to take care of was getting prices for them, ordering after that if the prices were all right for me to order for them, and answering telephones. I never opened the place of business at East Ninth Street and I very seldom closed it. I had no plumber's license or certificate of qualifications under the ordinance of the City of Los Angeles and have never had one. My husband, John M. Eustace and our son John Eustace did each have such a certificate of qualifications as a master plumber. A certificate of qualifications as master plumber is required under the ordinance of Los Angeles to be held by one operating a plumbing business. I have never put any money into the plumbing business either at East Ninth Street or at La Brea Avenue or at any locations where my husband was engaged in the plumbing

(Testimony of Katie M. Eustace)

business. We have been married thirty years this November and he was in the plumbing business when I married him, contracting and repairing.

Q Where was he located?

THE COURT: That I do not regard as material, Mr. Tuttle.

MR. TUTTLE: We want to show by this witness, if the court please—

THE COURT: Do not argue. Do not argue. We are down to the present day, you know, and I have stated before, and this is my view, that we are governed by the principles as of the day this Receiver was appointed. That is my view in this case, so that it is useless going back.

MR. TUTTLE: I will endeavor to conform to your Honor's ruling. I simply want the record to show what we are prepared to prove.

THE COURT: No, I will decline to allow time to be taken up. I think you have sufficiently shown that. I know you have, in fact, for the basis of any exception, so do not do that.

MR. TUTTLE: May we have an exception to your Honor's ruling?

THE COURT: Yes, sir.

(Exception No. 17)

The witness further testifies on cross-examination as follows:

I had a key to the premises on East Ninth Street and others had keys including my husband, our son and various employees. Mr. Kupfer had a key. Mr. Steven-

(Testimony of Katie M. Eustace)

son who has been mentioned in the testimony was employed by my husband, John M. Eustace, originally in 1925 and at various times since then he has worked at the East Ninth Street shop off and on as we needed him.

At the hearing of the contempt charge against me I was required to produce certain blank checks drawn by J. A. Griffith. I received those checks from Mr. Griffith that morning. They were to be used to pay for some pumps and buy some merchandise for Mr. Fowl. Mr. Fowl was making purchases of a large amount of equipment of various kinds for use in the construction of a refinery at Long Beach. He was making those purchases through Mr. Griffith, with my help. Money was handed from time to time by Mr. Fowl to Mr. Griffith for the purpose of depositing in Mr. Griffith's account to make payments on those purchases. I had no interest in that money which was deposited in Mr. Griffith's account by Mr. Fowl.

On September 10th, 1934, the day that Mr. Lynch went down to the shop at 1246 East Ninth Street, when he came into the shop I was not handed a copy, or a certified copy by Mr. Lynch of his appointment as Receiver and he did not show me such a copy at any time while we were there. I did not have a gun of any kind there. I never owned a gun in my life and had no gun in the shop. I did not state to Mr. Lynch that I would use a gun on anybody trying to gain possession of the property at East Ninth Street. Mr. Lynch proceeded to tell me the unlimited powers of a Receiver and said that he had one bankruptcy case of a Mr. Baer and they went in there and there was a safe there, and this safe be-

(Testimony of Katie M. Eustace)

longed to another corporation and he insisted that this safe be opened and Mr. Baer would not open it, so they just got dynamite and blew the safe door open. And in that connection I said to him, "Well, if this man that owned the safe and was there, and Baer had nothing to do with it, he would be standing on his rights to have used a gun." And he says, "Why with a Receiver." I did not make a statement to the effect that I would use a gun against Mr. Dechter.

I was present when Mr. Fourl and Mr. Lynch left the shop on that day. Mr. Lynch said, "There is only one way I will get out of here, Charlie. You will just have to touch me on the arm." It was very friendly. "And I will get out." Mr. Fourl says, "Well, this is John M. Eustace's property and this is his place of business and you will have to." So he jokingly just happened to touch Mr. Lynch and they went out very friendly. Mr. Lynch made no apparent resistance whatever. He walked through the door. He got about four feet outside and I followed and just locked the door. They were laughing and talking and in a joking manner I said to him, "This looks like a spring dance."

REDIRECT EXAMINATION OF KATIE M. EUSTACE

On redirect examination by Mr. Dechter, Katie M. Eustace testified as follows:

Mr. Kupfer and I sold royalty per cents in the oil well in order to help finance the drilling and the money was

(Testimony of Katie M. Eustace)

put into the bank account of Mr. Griffith. We gave assignments of certain interests in the well in consideration of this money and the money was deposited in Mr. Griffith's bank account, I imagine in the same way that the money of the Eustace Plumbing Company was deposited in that account. I have had no bank account of my own and I have had no income of any kind except what came out of the Eustace Plumbing Company. Rents collected by me from various pieces of real property owned by me have gone to pay the taxes on the real property. These rents were handed to Mr. Griffith and put in his bank account and he did pay out the expenses for taxes, water, and street work.

It is a fact that my husband was away in Mexico for about twelve months but he has been back from Mexico for two years. During the time he was away our son, John, ran the Eustace Plumbing Company. I took orders from him. I testified in a divorce hearing between my son and his wife that he was working for 75 cents an hour and forty per cent of the profits. That is what I testified to, because that is what the fact is. When my husband was away that time I helped my son, John. If he wanted anything bought he would say to me, "Get the price on that." Then when I would get the price on it he would say to me, "Order it." It is not true that since my husband returned from Mexico he has been away for periods as long as three or four months at a

(Testimony of Katie M. Eustace)

time. The fact is he has been trying to put over some mining deals and would be gone maybe a week, come back, sometimes two weeks and come back. The longest time he has been away is three months.

RECROSS EXAMINATION OF KATIE M.
EUSTACE

On recross examination by Mr. Tuttle, Katie M. Eustace testified as follows:

The Mission Oil Refinery referred to in my testimony was the refinery from which the equipment was being purchased for use in the Long Beach Refinery which Mr. Fowlr was building. The income from the Eustace Plumbing Company was used in the family expenses of myself and my husband in our home where we were living together. Sometimes Mr. Eustace would come in with a mining deal. He would set up some machinery or something and he would hand me \$25 or \$50 to use to run the house, or tell me to give it to Mr. Griffith and deposit it. My husband received money from time to time out of the Griffith account whenever he asked for it. My husband did not consent to my using any of the proceeds from the Eustace Plumbing Company going into the Griffith account, for this oil well that Mr. Kupfer and I were drilling. He didn't want me to have anything to do with it.

(Testimony of George T. Dyer)

DIRECT TESTIMONY OF GEORGE T. DYER

GEORGE T. DYER

called as a witness on behalf of the petitioner, E. A. Lynch, being first duly sworn testified as follows:

I am employed by Mr. Lynch from time to time in connection with receiverships and trusteeships in which he is acting.

(The witness was shown a large bundle of checks.)

The Receiver received those checks from the files at 166½ North La Brea which is one of the places of business of the Eustace Plumbing Company. As far as I remember, these checks run from about November, 1932 up to and including July 31 or 30th of 1934 I made an examination of those checks. The manner in which I went through those checks, I do not believe I saw one check issued to John M. Eustace that I could interpret as being John Eustace, Sr. There are some checks issued to John Eustace which are endorsed by John Eustace, Jr. My testimony is that I was unable to find any checks made out that were endorsed by John Eustace, Sr.

Q BY MR. DECHTER: In going through the books that you got from Mr. Griffith, did you find any record of any wages having been paid to John Eustace, Sr.?

MR. TUTTLE: Just a moment. We object as hearsay and not binding upon this respondent in any way.

The COURT: These are the receivership books, aren't they?

MR. TUTTLE: These are not receivership books, if the court please. These are the personal books of Mr. Griffith and therefore not material to the receivership.

(Testimony of George T. Dyer)

THE COURT: Mr. Tuttle, Mr. Griffith was the treasurer of the bank account.

MR. TUTTLE: That is true in this case, but he was not Mr. Fourl's agent in that respect and, therefore, any statements which appear in his books with respect to those matters would not in any wise be binding upon Mr. Fourl in this proceeding.

THE COURT: Overruled. Answer the question.

MR. TUTTLE: Exception.

(Exception No. 17)

The testimony of the witness continued as follows:

In going through the books, that we got from Mr. Griffith, we did not find any record of any wages having been paid to John Eustace, Sr.—no entries in there that would show that John Eustace, Sr. received any hourly wage; and the only answer that I could give was the answer that John Eustace, Jr. gave to me right in the place of business at 166½ North La Brea.

Q BY MR. DECHTER: And what was that conversation that you had with John Eustace, Jr.?

MR. TUTTLE: Just a moment. We object to that as wholly hearsay.

THE COURT: It is, but nevertheless he apparently was either an employee or apparently a principal in this business.

MR. TUTTLE: That is true, your Honor, but the admissions or statements of an agent are not competent evidence except when they are made within the scope of his employment during the performance of his duties as such agent. And it is apparent—

THE COURT: No, that would be true in a case on trial, but this is an informal hearing, understand. The

(Testimony of E. A. Lynch)

court makes up its mind here from all the facts and circumstances produced. Objection overruled. Answer the question.

MR. TUTTLE: Exception. (Exception No. 18)

A I asked Mr. Griffith if they kept an account for Mr. John Eustace, Sr., and the answer was given by John Eustace, Jr. in words to this effect: "Why, no. No one questions what he makes in this business and no books are kept for him."

DIRECT EXAMINATION OF E. A. LYNCH,
RECALLED

E. A. LYNCH

recalled as a witness on his own behalf testified on direct examination as follows:

I made an examination of the checks and bookkeeping records that Mr. Griffith turned over to me. In that examination I did not find any evidence of any payments being made to John Eustace, Sr. I got from Mr. Griffith a book which purported to be the cash receipts and disbursements of his business or the Eustace Plumbing Company and in going through that book I found an entry where John Eustace was paid \$4.00 on September 1 of this year, and also a book that I would describe, on one side of the sheet would be what they called a work sheet and the other page would be marked expenses—expenses of the month, and the work sheet showing the distribution on this work sheet of various plumbing jobs. These are the books I spoke of as having been turned over by Mr. Griffith.

(Testimony of E. A. Lynch)

CROSS-EXAMINATION OF E. A. LYNCH

The witness E. A. Lynch testified on cross-examination by Mr. Tuttle as follows:

Q BY MR. TUTTLE: Mr. Lynch, did you find in these books that you have described evidence that Mr. Griffith was apportioning the overhead of the business and the cost of materials, for the purpose of determining profit whereby he might distribute to John Eustace, Jr. a 40 per cent of the profits?

A There was no names at the top of the pages indicating the distribution of the profits and purchases, etc., but he pointed out that this column is for John Eustace, Jr., 40 per cent of this column is for Mr. Eustace.

I do not recall just what the heading was, but I know his name was not on there. In the first column it would show the amount of sales and then it would show a column for the cost of the merchandise, of the cost of the labor, and apparently 40 per cent was receipted for by John Eustace, Jr. and then the balance to go to John Eustace, Sr. of the net profits. That was his explanation of it, but there were no names at the top of the pages or columns.

REDIRECT EXAMINATION OF E. A. LYNCH

On redirect examination the witness E. A. Lynch testified that the three books which he had mentioned were in the La Brea Street store under the care of the keeper and that he would have them produced at once.

(Testimony of B. A. Stern)

DIRECT EXAMINATION OF BENJAMIN A.
STERN

B. A. STERN,

called as a witness on behalf of the petitioner E. A. Lynch being first duly sworn testified as follows:

I am employed from time to time as a keeper of places of business in charge of Mr. Lynch as Receiver and trustee and I was so employed for that purpose on September 10th, 1934 at the place of business of the Eustace Plumbing Company on East Ninth Street. I was there on that day. When it was told to Mrs. Eustace that I was to stay there all night she did make threatening statements and she said it would be too bad for me if I did, and I told her that I was working for Mr. Lynch and if he told me to stay there that night, I would stay there.

(At this point the petitioner rested.)

RESPONDENT CHARLES W. FOURL'S CASE

MR. TUTTLE: If the court please, I want to conform, as I have stated, to all the court's rulings. And I desire to expedite this matter and save the court's time. I had prepared this morning a formal offer which I could read in two or three minutes, setting forth the matters we desire to prove. Certain of those matters have been touched upon, but I do not think sufficient to show our position and I desire to read this offer as I

have prepared it this morning, for the purposes of the record.

On behalf of the respondent Charles W. Fourl we offer to show the following facts, and we offer to make that proof through witnesses who are available here. Does your Honor excuse us for not going further and putting the witnesses on the stand and asking formal questions to make this showing?

THE COURT: You are going to make your offer of proof. You are allowed to do that, sir. Do I understand you?

MR. TUTTLE: I want to know if the court desires me to call witnesses?

THE COURT: Oh, no. Your offer of proof, while it is not always the best method, it will be allowed. So go right ahead. It will be deemed that you call the witnesses, of course.

MR. TUTTLE: We offer to show that Katie M. Eustace, alleged bankrupt, is and since the year 1904 has been the wife of John M. Eustace. That they are and ever since 1904 have been living together as husband and wife and residing in Los Angeles, California. That John M. Eustace was for several years before his marriage engaged in the plumbing business; that after his marriage he continued in the same plumbing business, which was a retail and contracting business. That about a year after his marriage his wife, Katie M. Eustace, began to assist him in this business a little. As she learned the business, devoted her time to the office and shop side of the business and that her husband devoted his time more to the estimating, contracting and mechanical side of the business. That never at any time has the wife, Katie M. Eustace, invested or in anyway put any money into this plumbing business. That the business was

originally conducted from a shop on Main Street, Los Angeles. That it was later moved to and conducted at 830 Ceres Avenue in the same city. That in the year 1923 John M. Eustace moved this business to 1246 East Ninth Street in the same city, and retained the Ceres Avenue place for a while as a warehouse. That about 1929 the Ceres Avenue place was discontinued. That when business at the East Ninth Street location had dwindled to a point of little profit, John M. Eustace, in the year 1930, opened another shop at 166½ La Brea Avenue in the western part of Los Angeles, where it was possible to get more retail plumbing jobs, and put his son, John Eustace, Jr., in this shop. That this son had been learning and assisting him in the business since 1925. That John M. Eustace and his said son each had and have the certificate of qualification as master plumber required by the ordinances of the City of Los Angeles of persons engaged in the business of plumbing, and issued to them by the Board of Building and Safety Commissioners of that City. That Katie M. Eustaces does not have and never has had such a certificate. That a license is required by Los Angeles City Ordinance for all plumbing business and that the license for the plumbing business to Eustace Plumbing Company conducted at 1246 East Ninth Street and 166½ La Brea Avenue is and was long prior to the proceedings in this bankruptcy proceeding issued to John M. Eustace.

We offer to show further that Katie M. Eustace has never filed the application or taken any proceedings required by Sections 1811 to 1821, California Code of Civil Procedure, with respect to married women desiring to become sole traders. That their living expenses have always been paid out of the proceeds of the plumbing

business conducted in the locations named by this offer of proof.

MR. DECHTER: To which offer of proof we will make the objection that it is incompetent, irrelevant and immaterial; that the only issues on this particular hearing is who was in possession or control of the premises on East Ninth Street on the day that the Receiver went down there and what, if any, force or steps were taken to evict the Receiver from said premises after he had secured peaceful possession of them. Those are the only two issues before the court at the present time, and I make my objection upon the ground that the offer is entirely incompetent, irrelevant and immaterial, except as confined to those two issues.

THE COURT: That is the view, of course, that the court expressed and that is the ruling. Therefore, the objection is sustained.

MR. TUTTLE: That there may be no misunderstanding, I do not understand that this objection goes to the fact that I have already suggested to the court that we have not made the offer in the proper form?

THE COURT: No, no. That is not my understanding, and it will be deemed that you have offered witnesses who will testify to those facts. I do not know but your statement said that you would prove them. I would not agree to that exactly. In other words, but you would offer testimony in support of what you have suggested, what you have read, but this ruling is made—let me make it perfectly clear—as though you had offered witnesses who testified that those were the facts. In other words, no objection on the ground that you have not called witnesses to support your statement. Is that satisfactory?

MR. TUTTLE: I think that covers the matter. We take an exception to the court's ruling.

(Exception 19.)

MR. TUTTLE: We desire to offer in evidence so that the record may show the form of the certificate of qualifications which we have referred to in our previous offer, the certificate of qualifications to the master plumber issued by the Board of Building and Safety Commissioners of the City of Los Angeles on February 23, 1934.

MR. DECHTER: We have no objection to those documents being offered, Mr. Tuttle.

THE COURT: Very well, let them be admitted.

THE CLERK: Mr. Fowl's Exhibit A.

The said Exhibit A is as follows:

CITY OF LOS ANGELES

No. 3086-B

RENEWAL
CERTIFICATE OF QUALIFICATION
MASTER PLUMBER

(Printed impression
of seal of City of
Los Angeles)

Date

Feb. 23, 1934

This certifies that Mr. J. M. Eustace, Sr., 1246 E. 9th Street, Los Angeles, California has satisfactorily passed the examination presented by ordinance No. 58500 as Master Plumber, and is entitled to engage in, and work at the business of plumbing within the limits of the City of Los Angeles, subject to the rules, regulations, and provisions of said ordinance, for the term of one year from this date, unless license shall be sooner re-

voked or suspended. If not renewed within time prescribed by Ordinance, another examination must be taken and examination fee paid.

Witness our hands this February 23, 1934. This certificate expires February 23, 1935.

	Board of	
	Building and Safety Commissioners	
	City of Los Angeles	
(Seal of	Robert H. Orr	
Board of B & S C		President
L. A., Cal.)	F. A. Munsie	
		Secretary

MR. TUTTLE: And with that we offer certified copy, certified by the County Clerk of Los Angeles County, the certificate of business under fictitious name filed by John M. Eustace in the County Clerk's office, which speaks—

MR. DECHTER: Filed in February of this year.

MR. TUTTLE: Yes. It speaks for itself.

MR. DECHTER: No objection.

THE CLERK: That will be Exhibit B.

The said Exhibit B is as follows:

The undersigned, John M. Eustace, hereby certifies that he is conducting a plumbing business at two locations in Los Angeles, California, under the fictitious name of Eustace Plumbing Company; that the sole owner of the said business is John M. Eustace, and that he resides at No. 901 North Kenmore Street, City of the County of Los Angeles, in the State of California.

Witness my hand this 16th day of February, 1934.

John M. Eustace.

STATE OF CALIFORNIA)
 County of Los Angeles) SS

On this 16th day of February, 1934, before me, J. A. Griffith, 166½ North La Brea Avenue, a Notary Public, in and for said County, personally appeared John M. Eustace, known to me to be the person whose name is subscribed to the within instrument and he acknowledged to me that he executed the same.

Witness my hand and official seal.

Notarial
 (SEAL)

J. A. GRIFFITH,
 Notary Public in and for
 said County and State.

Filed Apr. 2, 1934,
 L. E. Lampton, County Clerk
 By I. L. Murstein, Deputy

45551

With the foregoing certificate of fictitious name is an affidavit of publication subscribed and sworn to by C. F. Brown on April 27, 1934, before Ruth B. Altizer, Notary Public for Los Angeles County California, and to which affidavit is annexed a copy of the foregoing certificate. In said affidavit the affiant deposes and says:

That he is and at all times herein mentioned was a citizen of the United States, over the age of twenty-one years, and that he is not a party to nor interested in the above entitled matter; that he is the principal clerk of the publisher and proprietor of the Greater Los Angeles, a newspaper of general circulation, printed and published weekly in said county and which newspaper is published for the dissemination of local news and intelligence of a general character, and which newspaper at all times herein mentioned had and still has a bona fide

subscription list of paying subscribers, and which newspaper has been established, printed and published in the said County of Los Angeles for a period exceeding one year; that the notice, of which the annexed is a printed copy, has been published in the regular and entire issue of said newspaper, and not in any supplement thereof, on the following dates, to-wit:

April 5, 12, 19, 26, 1934.

Upon said affidavit is endorsed "Filed May 11, 1934, L. E. Lampton, County Clerk, By I. L. Murstein, Deputy.

Annexed to the foregoing certificate of fictitious name and affidavit of publication is the following certificate under the seal of the Superior Court of Los Angeles County.

STATE OF CALIFORNIA) No. 45551 (Fict.)
) SS.
 County of Los Angeles)

I, L. E. Lampton, County Clerk and ex-officio Clerk of the Superior Court within and for the County and State aforesaid, do hereby certify the foregoing to be a full, true and correct copy of the original certificate of fictitious name and affidavit of publication in the matter of the Eustace Plumbing Company; as the same appear of record, and that I have carefully compared the same with the original.

In witness whereof I have hereunto set
my hand and affixed the seal of the
Superior Court this 20th day of Sep-
tember, 1934.

(SEAL)

L. E. Lampton, County Clerk,
By G. M. Hysong, Deputy

(Testimony of C. W. Fowl)

DIRECT EXAMINATION OF CHARLES W.
FOURL

C. W. FOURL,

the respondent called as a witness in his own behalf and being first duly sworn testified as follows:

I live in the City of Los Angeles and have lived here for a good many years. I am an attorney, licensed to practice law in the State of California and have been for the past 25 years. I have been attorney for John M. Eustace for the past 7 or 8 years. After the filing of the petition in bankruptcy against his wife and in view of the manner in which the proceeding was entitled as Katie M. Eustace doing business as the Eustace Plumbing Company, he consulted me with respect to his rights in the Eustace Plumbing Company and he authorized me to appear and protect his rights and to do whatever was necessary in connection with any proceedings which might be taken in the receivership. On September 10, when I was present at 1246 East Ninth Street at the Plumbing shop of the Eustace Plumbing Company, Mr. Lynch did not serve upon me or hand me or have anyone else hand me a copy or certified copy of the order of appointment of Mr. Lynch as Receiver. At no time during that afternoon did Mr. Lynch ask me to leave the premises nor did he during the course of that afternoon ask Mrs. Eustace to leave the premises. I was there present continuously from 1 o'clock until approximately 6 o'clock. Mr. Lynch was away a little while. He went out a little while and left a couple of his men there. After we stepped out upon the sidewalk,

(Testimony of C. W. Fourl)

Mr. Lynch made no offer to or request to reenter the building. We made no effort to prevent his reentering the building. As a matter of fact Mr. Eustace went out to get in my car that was sitting in front of the building and the door was left open, left ajar about two or three feet; and Mr. Lynch and two of his men were out on the front of the driveway and Mrs. Eustace was getting in my car, leaving the door open, and I said to her, "Well, you haven't locked the place." She walked back, locked the place, fiddled around for her keys and finally locked the place. Mr. Lynch made no request upon Mrs. Eustace for the keys to the shop. During the course of the afternoon while we were all there together at the plumbing shop I did not see or hear any threatening gestures or language addressed by Mrs. Eustace to anyone there present. Nothing occurred in my presence that was of a threatening gesture, and I do not think, from what I saw, that there was anything of that kind occurred. The only thing that I heard in the way of angry tones or language in anger was when Mrs. Eustace gave Mr. Dechter a few raps. Outside of that our conversation was very friendly all afternoon. We stood there together talking it over, talking about everything else but this; and, as a matter of fact, we were waiting for Mr. Casey to come back. We wanted to talk to Mr. Casey and we found out that Casey was not home. Then I said to Lynch, "I want to talk to Casey about the matter." And Lynch says, well he says, "I don't think you are going to find him there. I think he has gone to a Native Sons' affair of some kind." Well, I said I would call him a little later and we found out he would not

(Testimony of C. W. Fourl)

be home until 5:30 or 6 o'clock, so we sat around there until 5:30, or '45, something of that kind and Lynch says, "Well, is this going to be a wake?" I said, "No." I said, "We will try to get hold of Casey again." And then the question arose whether he should call him or I should call him or Mrs. Eustace should call him. And finally, I think Mrs. Eustace called Casey's home, and right after she called there she turned back to us and said, "Well, he is just driving in. Now we will have to wait a moment." So we then talked with him on the 'phone and explained that Mr. Lynch was there and trying to take possession of the matter, of the place of business, and then he said that he wanted to talk to Mr. Lynch. And he talked to Mr. Lynch and finally he said he wanted to talk to you, and then I talked to him a moment and then he hung up the phone.

When we got ready to go, I stated to Mr. Lynch, I said, "Now, Mr. Lynch," I said, "This is the business of John M. Eustace. You will find that the certificate of fictitious name is in his name. He has been in business for about 35 years." I said, "You are, it seems to me, in this situation: That, I think, ought to be taken into account." He then got hold of the man that was out at the La Brea store and who, from the conversation, read to him a certificate of fictitious name which they had found out there.

When we were closing up, I said to Mr. Lynch, "Now, you can't remain here, Mr. Lynch." I said, "This is the place of business of Mr. Eustace and the court never authorized you or anybody else to take possession of property other than the property of the bankrupt or alleged bankrupt in this case, Katie M. Eustace." And I

(Testimony of C. W. Fourl)

said, "There is a real liability on your bond under this situation and I don't believe that I would endeavor to take possession of this." He said, "Well, Charlie," he said, "I went out of a place similar to this at one time." He said, "I was reprimanded." And he said, "You will have to place your hand on me and then I will go out with you." So I said, after I got done joking with Casey on the phone, why, I said, "Come on, we are going to close up." And Lynch was standing and I put my arms around his waist and we walked out to the door. Not a particle of resistance of any kind, no argument or discussion of any kind. And when I got out on the outside, about four or five feet, why, I took my knee and playfully pushed him, and that was outside in the doorway. I imagine the doorway in front of the house, the place where we park cars is probably 12 or 15 feet between the sidewalk and the store and that is where that occurred. Lynch stood there and talked to two of his men. I am not sure whether two or three. This man was here and two other of his men, and then spoke about going to the telephone somewhere in the neighborhood and Mrs. Eustace and I got in the car and we drove away. The door was left open. She had been in my car and came back and fumbled around in her purse and got the keys out and locked the door. Neither Mrs. Eustace nor I made any statement to the receiver to the effect that he could not put a padlock or a lock on the door.

(Testimony of C. W. Fournl)

CROSS EXAMINATION OF CHARLES W. FOURL

Mr. Lynch never called Mr. Dechter on the telephone while I was there on that afternoon. At the end of the day he said he was going out to telephone to Mr. Dechter. He did not make any statement to me during that afternoon that he had been advised that if he found the bankrupt in possession he was entitled to take possession. There was no discussion of any matter of that kind. I knew, as a lawyer, that if the bankrupt was in possession and claiming title to the property that the Receiver was entitled to succeed to that possession. I knew that at that time Mrs. Eustace had a key to the premises. I did not know that she had keys that opened the door on the mezzanine floor. When Mrs. Eustace and I came in to the shop she went upstairs and there is a little balcony up there and has a door with a glass in it, leaving two-foot glass in there, and she went up and opened that door and went to the telephone there, and that was open all the balance of the afternoon. As a matter of fact, she asked Mr. Lynch if he wanted to go up and telephone upstairs at one time, and Mr. Lynch says, "No." She said, "You can't telephone down here unless that is fixed." He said, "No, I have just taken that off and I can telephone right here." I saw Mrs. Eustace open the door to the mezzanine floor and I saw her take the key out of her pocket and close the outside door of the shop after Mr. Lynch and I had walked out. I did tell Mr. Lynch dur-

(Testimony of C. W. Fourn)

ing that afternoon that he was a trespasser. I told him that this was the property of John M. Eustace, who was in possession and control of it and that he, Lynch, was a trespasser. Mr. Lynch did not at any time during that afternoon suggest that I file a petition for reclamation. Such a matter was not discussed at all. When I arrived at the plumbing shop with Mrs. Eustace I was driving a V-16 Cadillac. Mrs. Eustace drives one of my cars, a La Salle car which she uses whenever she is about my business. I did not say she uses it every day in the week. She sometimes keeps it at her home at 901 North Kenmore at night. If we need the car we take the car and utilize it. She is buying for me most of the time. I would say that the car is kept at night at 901 North Kenmore most of the time. It is my car. She has not been using it ever since the car was purchased. I had seen Mr. Eustace within a week prior to September 10th. I was authorized to appear if there was any attempt to take possession of the business of John M. Eustace.

Q I mean, where did you get that authorization, because a week prior to that time there had not been any bankruptcy proceedings filed?

MR. TUTTLE: Just a moment. We object to that.

THE COURT: Do not interrupt. Do not interrupt. When this thing gets hot it is time for counsel to keep quiet.

MR. TUTTLE: I take an exception to counsel's statement as an untrue statement, shown by the record to be untrue, and I take exception to your Honor's remarks.

(Exception No. 21)

(Testimony of C. W. Fourl)

THE COURT: That is substantially what the record shows. Answer the question.

A I have a general authorization, in the first place, from Mr. Eustace to represent him in any matter that may arise, and have had for a number of years; and in the next place, we knew that you had been calling up, called up me, for example, and you had called up Mrs. Eustace and had threatened to do a lot of things for weeks before, and were trying to hold me up in connection with the transaction. I remember Mr. Dechter stopping me on the street about a month before the bankruptcy petition was filed and telling me that I. Henry Harris, the attorney for Mrs. Eustace, had offered to settle this judgment by giving a note signed by Mrs. Eustace and monthly payments of \$2500 guaranteed by me, payable at \$100 a month and that Mr. Dechter wanted to know if that was correct. I told Mr. Dechter that was not correct. I told him at that time that I had a trust deed on all her real estate and laughingly said that it was a bona fide trust deed. I cannot recall how long it has been since I personally appeared in any court proceeding for John M. Eustace. Mr. Tuttle has looked after most of my business and he may have appeared in court for John M. Eustace since 1928. I very seldom appear in court but my office does through Mr. Tuttle. I see Mrs. Eustace quite often and have been seeing her quite often on business and other matters for the past three years. She has been helping me in making purchases for business enterprises in which I am interested and I have confidence in her ability to purchase well. It is not true that for the last three years I seldom had occasion to see Mr. John M. Eustace. I see him

(Testimony of C. W. Fourl)

in fact quite frequently out at his home at 901 North Kenmore. As I said I discussed business matters with John M. Eustace about a week before September 10, 1934, but I refuse to state what the discussion was about because I stand on my rights as an attorney not to divulge any private communication between my client and myself. It is not true that John M. Eustace is very illiterate. He is not very good as far as reading and writing is concerned but he is quite intelligent from a business angle. He operated the business down at that plumbing shop there, and at one time they were building four or five school buildings at Long Beach, building a Government hospital, all the plumbing work and heating. Out at San Fernando. That was about 1926 and 1927. He had done that for years. In the last three years Mr. Eustace has been keeping supervision of the plumbing business, but he has been interested in mining. The construction business which he must depend upon as a plumber has been rather poor so that he has placed a great deal of his attention to the businesses which were better and offered more chance of profit. I know that last year for a period of about four months he was down at the oil well at Baldwin Hills looking after the interests of his wife down there and that he got a few dollars a day as a side compensation as watchman and I have heard that he filed suit against certain sub-contractors for wages as a watchman. The facts are these: That his wife and this man Kupfer were interested in an oil well down at Baldwin Hills. There was some kind of a suit arose between them and he went down there and remained there, and he made some sort of a side deal, as I understand it, with Meadows to look after certain

(Testimony of C. W. Fowl)

things there. And Meadows became involved in that well and he secured some extra compensation from that in looking after their interests, too. I heard that he filed suit against certain sub-contractors employed by Mrs. Eustace and Mr. Kupfer for his wages as watchman. He got an allowance of Meadows' proportion of what he was to secure, but primarily he was there to protect the interests of his wife. He was not working for mere wage. He slept on the premises for the reason that it was necessary to prevent some people from running away with the derrick and the rotary and everything else. I think that was a very wise thing to do. He had a capable wife and son who could look after his interests. I do not pay Mrs. Eustace any compensation for doing this buying for me. She has been buying for me for probably 16 or 18 months. She has no interest whatever and gets no compensation of any character. It is just a matter of convenience. Mr. Lynch never made any demand on Mrs. Eustace for the keys to the premises at any time during the afternoon of September 10,—not in my presence.

RE-DIRECT EXAMINATION OF CHARLES W. FOWL

On redirect examination by Mr. Tuttle, Charles W. Fowl testified as follows:

I could not say exactly. John M. Eustace is, I imagine, about 52 or 53, around there. He has one arm that is in bad shape, interferes with manual labor of any extensive sort, heavy work. As I have stated, I know there were times in the contracting plumbing business done by John M. Eustace when he had three or

(Testimony of C. W. Fourl)

four big schools, big jobs running into large sums of money, forty to fifty thousand dollar jobs at a time. He had at times as high as some 70 employees and he had plumbing jobs on the San Fernando Veterans Hospital and I think the heating too, but I am not sure of that. At that time an explosion occurred from a gas leak under one of the buildings when a watchman lit a match and blew up a portion of the building and he was held responsible for the explosion.

RECROSS EXAMINATION OF
CHARLES W. FOURL

On recross examination by Mr. Dechter, Charles W. Fourl testified as follows:

I was the attorney for Mr. Eustace at the time he made the settlement with his creditors. I remained at the plumbing shop on September 10 from 1 o'clock to 6 o'clock because we were waiting to talk with Mr. Casey in connection with the matter and we thought we could persuade Mr. Lynch that he should go out and go to court and present it to the court and get its order or direction as to what should be done in the matter.

Upon the conclusion of the testimony of Charles W. Fourl it was stipulated in open court between counsel for the petitioner E. A. Lynch and Counsel for the respondent Charles W. Fourl that Mrs. Eustace would testify that Mr. Eustace is 58 years of age. It was further stipulated that portions of the record and files

(Testimony of C. W. Fourl)

in the matter of Katie M. Eustace, Alleged bankrupt, might be deemed to have been offered and read the evidence on behalf of the respondent Charles W. Fourl without the necessity of reading them in evidence and that this stipulation would cover the original petition of the petitioning creditors against Mrs. Katie M. Eustace, the petition upon which E. A. Lynch was appointed Receiver, and the order appointing Mr. Lynch as Receiver. It was further stipulated that the order appointing Mr. Lynch as Receiver was made *ex parte* without notice to anyone, that at such *ex parte* hearing no evidence was taken and that the order appointing the Receiver was made upon the verified petition therefore together with the allegations of the original involuntary petition in bankruptcy.

(Whereupon an adjournment of the hearing was taken to 1:30 o'clock P. M. of the same day, Saturday, September 22, 1934.

At 1:30 P. M. Saturday, October 22, 1934, the Following proceedings were had:

Mr. Dechter, attorney for petitioner E. A. Lynch, introduced in a promissory note in form as follows:

\$96.00

April 27, 1933

Five days after date without grace I promise to pay to the order of Wilson Spear Co., Ninety-six dollars, for value received, with interest from date at the rate of..... per cent per annum until paid. Principal and interest

payable in lawful money of the United States at 4601 E. 52nd. Drive, and in case suit is instituted to collect this note or any portion thereof I promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit.

Katie M. Eustace

No. Due May 2.

1246 E. 9th Street.

It was stipulated that the signature and address beneath it on this note are in the handwriting of Katie M. Eustace.

Mr. Dechter also introduced in evidence a check dated September 28, 1933, drawn on the Bank of America by J. A. Griffith, payable to Spears and Wilson Company, in the sum of \$4.75, with the typewritten words across the back, "Account of Katie M. Eustace in full to date," and endorsed "Pay to the order of Bank of America National Banking Association - Wilson - Spear Co., W. R. Atwood, Receiver."

It was stipulated that the above note and check had nothing to do with the Eustace Plumbing Company business but related to the oil well venture in which Mrs. Eustace and Mr. Kupfer were partners.

Mr. Dechter then introduced in evidence a check drawn by J. A. Griffith to the Eustace Plumbing Company for \$600, dated September 29, 1933, and endorsed across the back, in the handwriting (and so stipulated) of Mrs. Eustace, "Eustace Plumbing Company" and below this "Katie M. Eustace."

Objection to the introduction of this last check was made by Mr. Tuttle as "irrelevant and incompetent and not within the issues." The objection was overruled and exception duly taken and allowed.

(Exception No. 22)

(Testimony of E. A. Lynch)

DIRECT EXAMINATION OF E. A. LYNCH,
RECALLED

E. A. Lynch was recalled as a witness on his own behalf and testified as follows: I have made a hurried examination of the books and records that I got from Mr. Griffith to determine what moneys if any were paid to John Eustace, Sr. according to the notations in the books. These books were turned over to me by Mr. Griffith.

Q BY MR. DECHTER: What did Mr. Griffith say they were?

A Mr. Griffith said—might I explain in detail just what conversation and when it took place?

MR. DECHTER: Yes.

MR. TUTTLE: We object to the conversation with Mr. Griffith. It is hearsay as to us.

MR. DECHTER: You asked for foundation.

THE COURT: Overruled.

MR. TUTTLE: Exception to the hearsay statements of Mr. Griffith.

(Exception No. 23)

A We left the place, 166½ North La Brea. It was arranged to meet Mr. Griffith there. In fact, I sent Mr. Ben Stern with him out of the building to go with him in his car but when Mr. Griffith got down to Los Angeles and Market Streets he told Mr. Stern to go along and take a bus out there and he would meet him out there. We proceeded here and found the doors locked and remained all night. The next morning at 8:20 Mr. John Eustace, Jr. came into the place. I walked in behind him

(Testimony of E. A. Lynch)

and stated that I wanted to make a demand for the books and records. He said, "Mr. Griffith has them locked up in the desk there." He says, "He will be here very soon." A few minutes after that Mr. Griffith came into the rear door and handed me these books, three books. And I said, "Where did you have these, Mr. Griffith?" He says, "I got them from the place where they were taken yesterday." I said, "Where was that?" He said, "Well, a young lady here and she took them out and they were handed to me this morning by John Eustace." He was somewhat confused as to just where he got the books from.

The witness further testified on direct examination as follows:

My statement in summary of what the books shows is the result of my own personal examination. According to the entries in this book here which purports to be a report of each business month and what is known as a work sheet on the opposite page—in this book the first entry shown, the first page of the work sheet of August 1932—from August, 1932 up to and including June, 1934, appears an entry of cash paid—I can't get that—under the heading on the page is the total of general expenses starting at that point and going back. On June 13, it shows John M. Eustace, cash \$4.25. I have not totalled the amount here, I was in such a hurry today, but I should say the total amount received by John M. Eustace between the two dates stated would not exceed \$50, paid in amounts as low as 25 cents and up to \$4.25. The number of items is 41. Some of the items are marked "J. M. for gas" and here is "lunch 30 cents, parts 56 cents, gas \$1, gas, lunch, parts, and cash.

(Testimony of E. A. Lynch)

CROSS EXAMINATION OF E. A. LYNCH

On cross examination by Mr. Tuttle the witness E. A. Lynch testified as follows:

The book from which I have made this tabulation and the page which I have open here and which contains the item that I first called attention to "John M. Eustace, \$4.25", is under the heading of "General Expenses". These particular items to which I have referred are just simply marked "expenses". I do not know what it was for. They are not marked in any way to show that they are a payment of the net proceeds to John M. Eustace. I did not find in this book an account with John M. Eustace. There does not purport to be any account with John M. Eustace. There is nothing in the book that purports to show what John M. Eustace may have taken out of the business so far as net proceeds are concerned. All that I have found in the book here are these small items of \$1, \$2, or less than a dollar or two or three dollars which are for items like those I have described. For gas, parts, cash and such things. Small items of cash. I made a very hurried examination at noon time of this book and wrote down just what I found in the books there. Sometimes it says cash, sometimes car parts, and other times there is no notation at all as to what it is for. But there is nothing in any of the notations that I found here indicating that it is a disbursement in any way to John M. Eustace for any profits of the business or any returns of the business. It is a fact that throughout the book on one page on the left-hand side is an entry of the various items which are tabulated at the top or named at the top "February Expenses" or "March Expenses",

(Testimony of E. A. Lynch)

or whatever the month may be. And on the opposite side at the head of the sheet it is marked "March Work Sheet", in which the various jobs are listed with notations in the columns, showing when billed, the phone number, profit, labor cost, profit labor total; apparently being an effort to apportion receipts from each of those jobs so as to show what the various items of expense are, in addition to the items stated over on the opposite side, an apportioning of profits. The work sheet evidently is made up in order to apportion the costs of profit, labor costs, and the second column is for profit and labor and the total. There is nothing to indicate where that was posted to at all and nothing to indicate in this book what disbursement was made of the profits.

At the conclusion of the testimony of E. A. Lynch it was stipulated in open court between Mr. Dechter, counsel for the petitioner and Mr. Tuttle, Counsel for the respondent, Charles W. Fourn, that there has been no order of adjudication of bankruptcy in the matter of Katie M. Eustace, Alleged bankrupt.

It was further stipulated that upon September 12, 1934 the day of the hearing of the contempt charge against Katie M. Eustace, E. A. Lynch the Receiver went back to the East Ninth Street place of business and put a padlock on it and that that padlock is still on it.

It was further stipulated as a fact that none of the petitioning creditors, in the matter of Katie M. Eustace doing business as the Eustace Plumbing Company, Alleged bankrupt, were creditors of the Eustace Plumbing Company and that their claims had nothing to do with the Eustace Plumbing Company. But it was objected by Mr. Dechter that the fact stipulated to is immaterial

(Testimony of E. A. Lynch)

which objection the court sustained, to which ruling an exception was duly taken and allowed on the understanding between both counsel and the court that the stipulation as to the fact would be sufficient as an offer of proof of the fact on the part of the respondent, Charles W. Fourl. I knew and was advised during the morning of September 12 that an order to show cause directed to *Kate M. Eustace* and Charles W. Fourl had been issued by the court and was scheduled for hearing on September 12th at 2:00 P. M.

(Exception No. 24)

Whereupon the parties rested and Mr. Tuttle moved to dismiss the proceeding as to the respondent C. W. Fourl. on the ground that the evidence was insufficient to sustain a conviction for contempt; there was no proceeding pending in which the court could adjudge the respondent guilty of a criminal contempt; and upon the grounds stated in the original motion to dismiss; which motion was overruled and to which ruling an exception was taken.

(Exception No. 25)

The court then found the respondent Charles W. Fourl guilty of contempt and the matter was continued for sentence until Monday, September 24, at 11 o'clock A. M.

On Monday, September 24, 1934, at 11 A. M., the following proceedings were had:

MR. TUTTLE: May it please the court, so that the record may be clear, the court knows that there has been two separate proceedings here. I do not want the record

to become confused in the actual judgment or sentence which the court may give, because it may complicate the record; and I desire to have whatever your Honor does this morning so far as my client, Mr. Fowl, is concerned done in such a way that it will not be confused into one act of the court covering both of them.

MR. DECHTER: As I understand it, after the stipulation made with Mr. Casey, there is one order to show cause directed to both Mrs. Eustace and Mr. Fowl why they should not be ordered to restore the possession of the premises on East Ninth Street to the Receiver and why they should not be adjudged in contempt for evicting the Receiver. Then there is a subsequent contempt citation against Mrs. Eustace for not having delivered the proper means of gaining access to those premises after being so directed to do by the court in open court. That is my understanding of it.

THE COURT: Yes, that seems to be the situation.

MR. TUTTLE: Your Honor will recall, however, that there was a hearing with respect to Katie M. Eustace upon the order to show cause directed to both Katie M. Eustace and Charles W. Fowl, and at which we were not present and represented. And, therefore, the record is to a considerable extent separate and must be kept separate, and we do not want to be in the position of having the proceedings united in such a way that it may embarrass us in any subsequent proceedings that may be taken.

THE COURT: Well, they were joined in the same order to show cause. The hearing was had with respect to each at different times.

MR. TUTTLE: And on different evidence.

THE COURT: And on, it might be said, different evidence, all of which is separate in the record and, as I recall, there was some order made just the other day respecting that, was there not, Mr. Tuttle?

MR. TUTTLE: Stipulation was entered into between Mr. Dechter and Mr. Casey, representing Katie M. Eustace, at which time I requested your Honor to make the record clear that we were not involved in the stipulation.

THE COURT: I do not think you need apprehend any danger. They are not jointly—in a sense, of course, they are jointly charged. The sentence, however, will not in any sense be joint and each one might appeal. Each has a further remedy to the same extent as though he had been charged alone entirely. That is my understanding of your situation.

MR. TUTTLE: Very well, if that is the situation. And before the court proceeds with any sentence or judgment, I desire to renew my objection on behalf of Charles W. Fourn to the jurisdiction of the court to proceed summarily to hear and determine and punish as a contempt respondent's good faith claim as the agent and attorney of John M. Eustace, the ownership, possession and right of possession of the plumbing business conducted at 1246 East Ninth Street in John M. Eustace.

THE COURT: That is a motion?

MR. TUTTLE: Yes, I renew that objection.

THE COURT: Denied.

MR. TUTTLE: Exception, please, and I desire a motion to move to dismiss and discharge the whole proceed-

ing as to Charles W. Fowl, on the grounds already urged in these proceedings.

(Exception No. 26)

THE COURT: Motion denied.

MR. TUTTLE: Exception.

(Exception No. 27.)

“THE COURT”: No, I do not care for any law in this matter at all. The matter stands submitted, I understand, now.

This whole case from the very inception has been about as disagreeable a task as has ever confronted this court, and I trust that it will be a long day before I again listen to a recital of conduct such as has been recited here.

This evidence convinces me that ostensible possession and actual possession was in this lady, Mrs. Eustace. She had the keys to the place. She assumed to order the Receiver out. I expressed myself fairly on that, I guess, the other time.

Accompanied by the other respondent here, Mr. Fowl, she *forbad* the Receiver to have anything to do with the place; said she would not allow him. The Receiver was ejected from the premises. The slightest force is used, the Receiver adopting the well known policy that any force is sufficient, and being of the nature, desired to avoid disagreeable scenes, he consented to being ejected from the premises when a man of another disposition might well, and properly, have caused a different story here, a different result.

I want it understood now that this court does not tolerate any such action as has been taken in this case; and

I was considerably surprised when Mr. Fourl attempts to justify his action as of a friendly nature and agreed to. That is what surprised me in this hearing. I supposed that this hearing was based upon the right, the asserted right of these people to do what they did do, refuse to honor an order of this court. He was ejected from the premises.

The evidence developed here with regard to the connection with this business of this lady is nothing—in view of that evidence, I will say, her claim that the Receiver was not justified in assuming that she is the person involved is nothing short of ridiculous, and I very much regret that any lawyers—and I will say this advisedly—practicing before this bar have ever countenanced, advised, tolerated or encouraged such proceedings as have been shown here. The respect that is due to this court and to its orders will cause anyone to oppose—anyone who has a proper regard for himself as a lawyer or for the mandates of the court or the respect that is due to the court—it is difficult to speak with calmness of what has taken place in this proceeding as recited here.

After hearing a few days ago, Mrs. Eustace, ordered by the court to turn over the keys to the premises, purported to do so, practiced a deliberate deception, a deliberate disobedience of the court's order right here in the presence of the court. It was not done. The court rejects as totally untrue the statement, both of this gentleman, Mr. Fourl, and of Mrs. Eustace, that they knew

nothing of any change in the locks. Too ridiculous, gentlemen, to be commented upon. A contempt in the very presence of the court of a very serious nature. That is what we have before us here, coupled with the further facts, this bookkeeper, possessing the bank account of this business a fugitive at this moment, the United States Marshal, the officer of this court, unable to locate him after the most diligent search and what is, as reported to me by the marshal, the greatest deception. In line with everything else here, it seems to have impregnated everybody in connection with this case.

I say again, and I say seriously that it passes, with one possible exception—and that is within the last week—anything that I have seen here for an unsavory piece of business. This bookkeeper issuing checks signed by him which Mrs. Eustace carries around; she, in effect, in control of the bank account and not him; refusing to honor the order of the United States Marshal.

Such proceedings are not to be countenanced. Those are not the kind of acts that are recited in this court.

Stand up, Mr. Furl and Mrs. Eustace. You are adjudged in contempt of this court for a most flagrant violation of the order of the court; and you, Mrs. Eustace, violating the spirit in which the court acted a few days ago. You are both adjudged in contempt of this court. Sentence will not be pronounced upon you now, but it will on Monday at 11:00 o'clock in the morning.

Mr. Furl, do you agree to be present at that time?

MR. FOURL: Yes, sir.

THE COURT: Otherwise, you will be placed in the custody of the United States Marshal to insure your presence here.

MR. FOURL: I will be here at that time.

THE COURT: I say to you, sir, that any one who knows that he is under citation before this court, who refuses and fails to come to court, loses my respect instantly, any lawyer at this bar much more so. Be seated. Be seated, madam."

Whereupon the court pronounced its judgment in sentence of contempt as follows:

"Mr. Fourl, you are sentenced to pay a fine of \$1,000; to stand committed to the custody of the United States Marshal until it is paid."

Whereupon the respondent Charles W. Fourl was immediately taken into custody by the Marshal pursuant to the sentence and order of the court.

Whereupon the respondent Charles W. Fourl prays that the foregoing statement of the evidence and proceedings be settled, allowed, signed and authenticated and made part of the record for use on the appeal taken by him to the United States Circuit Court of Appeals for the Ninth Circuit.

Edward W. Tuttle

Hiram E. Casey

Attorneys for Charles W. Fourl.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

In the Matter of)	
)	
Katie M. Eustace, etc.,)	
)	
Alleged Bankrupt.)	)	No. 23770-C
)	
-----)	)	STIPULATION
	)	SETTLING
E. A. Lynch, Receiver of	)	STATEMENT OF
Katie M. Eustace, etc.,	)	EVIDENCE
	)	ON APPEAL OF
Petitioner,)	)	CHARLES W. FOURL
	)	AND
-vs-	)	KATIE M. EUSTACE
)	
Charles W. Fowl and)	
Katie M. Eustace,)	
)	
Respondents.))	

It is hereby stipulated and agreed that the foregoing statement of evidence on the appeals of Charles W. Fowl and Katie M. Eustace in the above entitled matter contains all the evidence which is relevant and material to and which is necessary for a full determination of the issues on the appeals of the said Charles W. Fowl and Katie M. Eustace from the judgments and sentences against them for contempt in the said matter; that the evidence is set out in simple and condensed form; that the testimony of the witnesses is stated in narrative form except where statement in the form of questions and answers is necessary to accurately reflect what occurred;

It is further stipulated that that portion of the statement of the evidence included in the foregoing statement that was had in the Katie M. Eustace matter only and was not also had in the Charles W. Fourl matter should apply to, and be, a part of the Katie M. Eustace appeal only; and,

It is further stipulated that that portion of the statement of the evidence that was taken in the Charles W. Fourl matter, may be, and is, a part of the statement of the evidence on appeal herein in the Katie M. Eustace matter.

The foregoing stipulations just hereinbefore made, are hereby made to conform with the stipulation of counsel and the order of Court that was made during the hearings on the said proceedings before the Hon. George Cosgrave, presiding.

It is further stipulated that we have received due and legal notice of the statement as required by equity rule, and we hereby waive further notice of the filing of said statement and we agree that the said statement as made may be approved by a Judge of the United States District Court, Southern District of California, without further notice to the parties hereto, and when so approved may be filed in the Clerk's office and become a part of the record for the purposes of the appeals taken by Charles W. Fourl and Katie M. Eustace, and shall be taken and deemed by the Court as a statement of evidence on both appeals in the above entitled proceedings.

R. Dechter
 Attorney for E. A. Lynch & Court
 Edward W. Tuttle
 Hiram E. Casey
 Attys for Charles W. Fourl
 Hiram E. Casey
 Attorney for Katie M. Eustace

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

In the Matter of)	
)	
Katie M. Eustace, etc.,)	
)	
Alleged Bankrupt.)	
	)	No.23770-C
_____)	
	)	ORDER APPROVING
E. A. Lynch, Receiver of	)	AND SETTLING
Katie M. Eustace, etc.,	)	STATEMENT OF
	)	EVIDENCE
Petitioner,	)	ON APPEAL OF
	)	CHARLES W. FOURL
-vs-	)	AND
	)	KATIE M. EUSTACE
Charles W. Fournal and)	
Katie M. Eustance,)	
)	
Respondents.)	

It appearing that the foregoing statement is a full, true and correct statement in simple, condensed form of all of the evidence which is relevant, material and necessary to a full determination of the issues on the appeals of Charles W. Fournal and Katie M. Eustance in the above entitled matter from the judgments and sentences of contempt

against each of them and that the testimony of witnesses is stated in narrative form except where the form of questions and answers is necessary to correctly reflect what occurred;

It is hereby ordered that the foregoing statement be and the same is hereby settled, allowed and approved as such statement on the said appeals and the same may be filed as, and become a part of, the record on said appeals of Charles W. Fourn and Katie M. Eustace.

DATED: Los Angeles, California, May 16, 1935.

Geo. Cosgrave

District Judge

Approved as to Form, under District Court Rule #44.

R. Dechter

Att'y for Petitioner, E. A. Lynch

[Endorsed]: Lodged R. S. Zimmerman Clerk at 46 min. past 4 o'clock Oct. 8 1934 P. M. By Theodore Hocke Deputy Clerk. Filed May 16, 1935 11 o'clock A. M. R. S. Zimmerman, Clerk Theodore Hocke Deputy.

At a stated term, to wit: The September Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, Calif., on Saturday, the 22nd day of September, in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable: GEO. COSGRAVE, District Judge.

In the Matter of)	
)	
Katie M. Eustace, etc.,	)	No. 23770-C-Bkcy.
)	
Alleged Bankrupt.)	

This matter coming on for hearing on (1) order to show cause, filed Sept. 18, 1934, on petition of E. A. Lynch, directed to Katie M. Eustace, alleged bankrupt, to show cause why she should not be adjudged in contempt and why the receiver should not be instructed concerning the premises at 1246 E. 9th Street, Los Angeles; and (2) order to show cause, filed Sept. 18, 1934 on petition of E. A. Lynch, directed to J. A. Griffith to show cause why he should not be punished for contempt of court, etc.; and (3) order to show cause, filed Sept. 18, 1934, on petition of E. A. Lynch, directed to Charles W. Fourl to show cause why he should not be punished for contempt of court, etc.; Raphael Dechter, Esq., appearing for the Receiver; Hiram E. Casey, Esq., appearing for Katie M. Eustace, the alleged bankrupt; E. W. Tuttle, Esq., appearing for Charles W. Fourl; Albert Bargion being present as court reporter;

In reference to the order to show cause on alleged contempt of Charles W. Fournl:

Katie M. Eustace, heretofore sworn, resumes the stand and testifies on direct examination by R. Dechter, Esq., re contempt of Charles W. Fournl, testifies on cross-examination by Edw. W. Tuttle, Esq., and in connection with her testimony the following exhibit is offered and admitted in evidence, to-wit:

Receiver's Ex. 1: 10 blank checks and adding machine tape;

Geo. T. Dyer is called, sworn and testifies for the Receiver on direct examination by R. Dechter, Esq.;

E. A. Lynch (not sworn) testifies on direct examination by R. Dechter, Esq., and is examined by the Court;

Benjamin A. Stearn is called, sworn and testifies for the Receiver on direct examination by R. Dechter, Esq.; and in connection therewith the following exhibits are offered and admitted in evidence, to-wit:

Fournl's Ex. A: Certificate of qualification of Master Plumber of J. M. Eustace, Sr.;

“ “ B: Certified copy of certificate of fictitious name and affidavit of publication in the matter of Eustace Plumbing Co.;

Chas. W. Fournl is called, sworn, and testifies for himself on direct examination by E. W. Tuttle, Esq., is cross-examined by R. Dechter, Esq., testifies on redirect examination by E. W. Tuttle, Esq., is examined by the Court, and thereafter,

At 11:08 o'clock a. m. recess is declared to 1:30 o'clock p. m.; and court reconvening in this matter at 2:48 o'clock

p. m., appearances being as before, A. H. Bargion being present as court reporter, it is ordered that counsel proceed with the hearing on order to show cause directed to Charles W. Fournl, whereupon, the following exhibits are offered and admitted in evidence. to-wit:

Receiver's Ex. 2: Promissory note, 4/27/33, to order of Wilson Spear Co., signed by Katie M. Eustace, for \$96.00; and check dated 9/28/33, to Spears & Wilson Co., signed by J. A. Griffith;

Receiver's Ex. 3: Check to Eustace Plumbing Co., dated 9/29/33, signed by J. A. Griffith, for \$600.00;

E. A. Lynch resumes the stand and testifies further on direct examination by R. Dechter, Esq., and on cross-examination by Attorney Tuttle, and in connection with his testimony the following exhibits are marked for identification as indicated, to-wit:

Receiver's Ex. 4

-- for Ident. -- Twin Lock loose leaf book;

Receiver's Ex. 5

-- for Ident. -- Day Book, Katie M. Eustace, d. b. a. Eustace Plumbing Company;

(These two exhibits may be withdrawn)

At 3:10 p. m. the evidence closes on order to show cause directed to Charles W. Fournl, and E. W. Tuttle, Esq., moves to dismiss order to show cause as to Fournl, and argues in support thereof, there being no ruling on said motion at this time.

At the hour of 3:10 p. m., on the order to show cause directed to Katie M. Eustace,

Katie M. Eustace is called, sworn and testifies for the Receiver on direct examination by R. Dechter, Esq., is cross-examined by H. E. Casey, Esq., testifies on redirect examination by R. Dechter, Esq., on re-cross-examination by H. E. Casey, Esq., and is examined by the Court; and on said order to show cause, directed to Katie M. Eustace,

Charles W. Fowl, heretofore sworn, is recalled and testifies on behalf of the Receiver on direct examination by R. Dechter, Esq.;

E. A. Lynch is called, sworn and testifies on direct examination by R. Dechter, Esq., and is cross-examined by Attorney Casey;

Charles H. Meade is called, sworn and testifies for the Receiver on direct examination by R. Dechter, Esq., and is cross-examined by H. E. Casey, Esq.;

John Eustace is called, sworn and testifies for the Receiver on direct examination by R. Dechter, Esq., and is cross-examined by Attorney Casey;

George T. Dyer is called, sworn and testifies for the Receiver on direct examination by R. Dechter, Esq., and is cross-examined by Attorney Casey;

Katie M. Eustace, heretofore sworn, resumes the stand and testifies on further examination by H. E. Casey, Esq., is cross-examined by R. Dechter, Esq., and testifies on re-direct examination by H. E. Casey, Esq., whereupon,

The receiver rests; and H. E. Casey, Esq., moves to dismiss order to show cause directed to Mrs. Eustace re contempt, which motion to dismiss is denied; whereupon,

On stipulation of Raphael Dechter and Hiram E. Casey, Esqs., it is ordered that the original order of September 13th, 1934, made as to Katie M. Eustace, finding her guilty of contempt, is vacated and set aside; it is further stipulated with respect to said Katie M. Eustace that the evidence subsequently adduced in support of the citation against Charles W. Fourl be deemed to supplement the evidence heretofore adduced as to Mrs. Eustace; and that the objection made by E. W. Tuttle, Esq., for Mr. Fourl may be deemed, in so far as it applies, to have been joined in and made by Hiram E. Casey, Esq., for Katie Eustace, H. E. Casey, Esq., to have the benefit of all of the objections and exceptions made by Ed. W. Tuttle; this order is made without prejudice to Mr. Tuttle in behalf of his client Charles W. Fourl;

The Court makes a statement, finds Katie M. Eustace and Charles W. Fourl Guilty of contempt, and sentence is continued to Monday, September 24, 1934, at 11 o'clock a. m.

[TITLE OF COURT AND CAUSE.]

ORDER IN RE CONTEMPT.

The petition of E. A. Lynch, Receiver in Bankruptcy herein, and the order to show cause thereon directed to Katie M. Eustace and Charles W. Fournl, came on for hearing in the court room of the Honorable George Cosgrave, District Judge, on September 12th, 1934, at the hour of 2:00 o'clock P. M., E. A. Lynch, Receiver, appearing in person and by Raphael Dechter, attorney at law, and Katie M. Eustace appearing in person and by Hiram E. Casey, attorney at law, Charles W. Fournl not appearing, it appearing to the court that service was not effected upon such respondent, and the Court having made its order dated September 13, 1934, adjudging Katie M. Eustace in contempt, and having on its own motion directed an order to show cause to issue to Charles W. Fournl why he should not be adjudged in contempt for the same matters recited in the petition upon which the order of September 13, 1934, was based, and the matter having come on regularly for hearing on Friday, September 21, 1934, and Saturday, September 22, 1934, the Receiver, E. A. Lynch, appearing in person and by his attorney, Raphael Dechter, and Raphael Dechter also appearing on behalf of the court, and the respondent, Charles W. Fournl, appearing in person and by his attorney, Edward W. Tuttle, Katie M. Eustace also being present, together with her attorney, Hiram E. Casey, and the matter having been fully heard, argued and submitted, and upon the submission of the hearing as against Charles W. Fournl, it having been stipulated at the request of Katie M. Eustace that the order of September 13, 1934, might be vacated so that the evidence introduced as the

basis of the order of September 13, 1934, might be deemed and considered supplemented by the evidence introduced on the hearing on Charles W. Fourl and Katie M. Eustace having the benefit of any and all objections and exceptions made on behalf of Charles W. Fourl insofar as it may be applicable to Katie M. Eustace and the matter having been submitted as to both Katie M. Eustace and Charles W. Fourl, the court now finds as follows:

That E. A. Lynch was appointed as Receiver in Bankruptcy herein on September 7, 1934, and duly qualified as such Receiver on September 10, 1934; that on September 10, 1934, at 11:45 A. M. said Receiver went to the premises at which the above named bankrupt was carrying on business, to-wit, 1246 East 9th Street, in the City of Los Angeles; that said Receiver was accompanied by J. C. Keenan and W. D. Hunt at said time; that upon arrival at said premises said Receiver found in charge of said premises one J. G. Stevenson, who had been working for the alleged bankrupt for a period of seventy weeks; that the bankrupt for approximately seventy weeks prior to the appointment of said Receiver had in her possession the keys to said premises, the management of said business, and direction of said business; that said J. G. Stevenson was employed by said Katie M. Eustace and received his compensation from said Katie M. Eustace; that in the operation of said business said Katie M. Eustace carried the bank account of the business in the name of the bookkeeper, J. G. Griffith, in which bank account she caused to be deposited the income from said business; that said J. G. Griffith would sign checks in blank and deliver the same to the bankrupt for use by her as she saw fit; that at the time of the hearing of the order

to show cause herein the said bankrupt had in her possession five checks signed by said J. G. Griffith on the Hancock Park Branch of the California Bank of Los Angeles, which said checks were undated and not filled in, with the exception of the signature of said J. G. Griffith; that said bank account was used by said bankrupt for her personal use, such as the payment of personal expenditures and her individual obligations; that a certified copy of the order appointed the Receiver was delivered by said Receiver to said J. G. Stevenson; that about 12:00 o'clock noon on September 10, 1934, the bankrupt appeared at the above address, accompanied by said Charles W. Fourl, attorney at law; that a certified copy of the order appointing E. A. Lynch as Receiver herein was handed by said E. A. Lynch, the Receiver, to said alleged bankrupt and to said Charles W. Fourl; that said bankrupt and said Charles W. Fourl demanded and directed that said Receiver quit and abandon the possession of said premises; that said Receiver advised said bankrupt and said Charles W. Fourl that in view of the fact that the bankrupt was in control thereof that he as Receiver succeeded to such possession and control and that if they felt that the Receiver should not remain in possession of said premises that they should file a petition with the above Court; that said bankrupt and Charles W. Fourl threatened and ordered said Receiver to quit said premises, notwithstanding such information by the Receiver; that said Receiver was barred from entrance to a room on the mezzanine floor on said premises to which the bankrupt had the keys; that said bankrupt refused to surrender said keys to the premises and to said locked storeroom on said mezzanine floor; that about 4:45 P. M. on September 10, 1934, said bankrupt called

her attorney of record, Hiram E. Casey, and thereafter requested that the Receiver talk to said Hiram E. Casey; the Receiver did talk to said attorney, Hiram E. Casey, and said attorney advised said Receiver that he was going to instruct the bankrupt to use all force necessary to evict him from said premises; that the Receiver said he would thereupon call his attorney for advice and that said Hiram E. Casey thereon instructed Mrs. Eustace, the alleged bankrupt, to prohibit the use of said telephone by the Receiver; that thereafter said bankrupt and said Charles W. Fourl refused to permit the Receiver to use the telephone on said premises and by force and violence ejected said Receiver from said premises and by their conduct demonstrated that they would violently and forcibly resist any attempt on the part of the Receiver to re-enter said premises; that said bankrupt personally locked the door in the face of said Receiver with the keys she had in her possession at the time of his eviction; that said Charles W. Fourl at all times herein knew that Katie M. Eustace was in the possession and control of the above mentioned premises.

As conclusions from the foregoing findings of fact, the Court advises that at the time of the filing of the petition in bankruptcy herein and at the time of the appointment of said Receiver that said Katie M. Eustace was in possession and control of the business being conducted at 1246 East 9th Street, Los Angeles; that the Receiver herein is entitled to the possession of said premises and the business conducted thereon.

IT IS THEREFORE ORDERED that said E. A. Lynch, as Receiver be, and he hereby is restored to the possession of said premises and the business conducted thereon at 1249 East 9th Street, Los Angeles, and that

said bankrupt and Charles W. Fourl and any and all persons, their agents and employees are hereby restrained as more fully set forth in the order appointing Receiver from in any wise interfering with the possession of said Receiver.

IT IS FURTHER ORDERED that said alleged bankrupt, Katie M. Eustace, and Charles W. Fourl, wilfully and deliberately violated the order of this Court appointing a receiver in bankruptcy herein and that said Katie M. Eustace and Charles W. Fourl committed a contempt by reason thereof of the above Court.

DATED: This 25th day of September, 1934.

Geo. Cosgrave
District Judge.

Let the foregoing order be filed nunc pro tunc as of Sept. 22, 1934.

Geo. Cosgrave
District Judge

[Endorsed]: Received copy of the within unsigned order this 25 day of Sept. 1934 but refuse to consent to form or regularity of said order, as an appeal has been perfected. Further reasons will be presented pursuant to Rule. Hiram E. Casey Attorney for K. M. Eustace. Received copy of the within unsigned order this 25th day of Sept. 1934 but refuse to consent to form or regularity of said order, which are disapproved, and also for the reason that an appeal has been perfected and is pending. Further reasons will be presented pursuant to Rule. Sept 25 - 1934. Edward W. Tuttle Attorney for Chas. W. Fourl. Filed R. S. Zimmerman Clerk at 16 min. past 5 o'clock Sep. 25, 1934 P. M. nunc pro tunc Sep. 22, 1934, By L. B. Figg, Deputy Clerk.

and E. W. Tuttle, Esq., having thereupon moved the Court to dismiss this matter as to Charles W. Fournl, said motion is denied and exception noted; and H. E. Casey, Esq., having thereupon made a statement to the Court and adopted the proceedings in behalf of Katie M. Eustace that were taken by E. W. Tuttle, Esq., it is by the Court ordered that his objections to the jurisdiction of the Court and the motion to dismiss be overruled and denied, and exception noted; and the Court having made a statement, it is now by the Court ordered that Charles W. Fournl pay unto the United States of America a fine in the sum of \$1000.00 and stand committed to the custody of the United States Marshal until said fine shall have been paid; and E. W. Tuttle, Esq., having thereupon given oral notice of appeal and asked the Court to fix bond on appeal, it is ordered that the appeal bond of Charles W. Fournl be fixed in the sum of \$5000.00; and

With reference to the contempt of Katie M. Eustace relative to the key, she is placed in the custody of the U. S. Marshal to be held by him in the Orange County Jail until such time as she is willing to place the lock upon the premises in these proceedings at 1246 East 9th Street in such condition that the key that is now in possession of the Receiver opens it and as soon as she expresses a willingness to do that, she will notify the U. S. Marshal, and when that is completely done, she may apply for a release and to be purged of the contempt; and sentence on the other matter, the first matter upon which she was adjudged in contempt, is continued one week.

This matter also coming before the Court at this time for hearing on (1) motion of Katie M. Eustace to vacate order of examination under Section 21-A Bankruptcy Act; and (2) motion of Katie M. Eustace to vacate and set aside order appointing E. A. Lynch Receiver; both of said motions being filed on September 20th, 1934; Hiram E. Casey, Esq., appearing for the petitioner, makes a statement to the effect that Katie M. Eustace has restored the lock, that Receiver is now in possession, that the key now fits lock on the door, and the Court thereupon orders that contempt citation against Katie M. Eustace in this respect be dismissed, and Katie M. Eustace is ordered released from custody; whereupon, H. E. Casey, Esq., argues respectively in support of said motion to vacate order appointing Receiver, and motion to vacate order of examination; R. Dechter, Esq., argues in opposition thereto, and thereafter, both of said motions of Katie M. Eustace are denied and exception noted.

At a stated term, to wit: The September Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, Calif., on Monday, the 1st day of October, in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable: GEO. COSGRAVE, District Judge.

In the Matter of)	
)	
Katie M. Eustace, etc.,)	)	No. 23770-C Bkey.
)	
Alleged Bankrupt.)	

This matter coming on for sentence of Katie M. Eustace for contempt; Hiram E. Casey, Esq., appearing for said Katie M. Eustace, who is present in court, and

It is the judgment of the Court that Katie M. Eustace, heretofore adjudged in contempt, pay unto the United States of America a fine in the sum of one thousand (\$1000.) dollars and stand committed to the Orange County Jail until fine is paid; and she is meanwhile remanded to custody;

A motion by H. E. Casey, Esq., for stay of execution is denied.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

IN THE MATTER OF)	
Katie M. Eustace, etc.,)	
Alleged Bankrupt.)	
E. A. LYNCH Receiver of	)	No. 23770-C
Katie M. Eustace, etc.,	)	PETITION TO
Petitioner	)	ALLOW APPEAL
Vs.	)	AND TO FIX BOND
CHAS. W. FOURL,)	
Respondent.)	

Chas. W. Fowl, having filed his Notice of Appeal herein from an order adjudging him in contempt of the above entitled court, pursuant to petition of E. A. Lynch and order to show cause thereon, dated and filed September 11, 1934, in the above entitled matter, accompanied by his Assignment of Errors in the above entitled matter, now prays the Court that his appeal be allowed and that an order fixing his bond on appeal staying proceedings and for costs be made.

Dated: September 24th, 1934.

Chas W. Fowl
(Chas. W. Fowl)

Hiram E. Casey
Edward W Tuttle

Attorneys for Chas. W. Fowl

[Endorsed]: Filed R. S. Zimmerman, Clerk at 2 min.
past 12:00 o'clock Sep. 24, 1934 P. M. By L. B. Figg,
Deputy Clerk

[TITLE OF COURT AND CAUSE.]

NOTICE OF APPEAL

To E. A. Lynch, alleged Receiver in Bankruptcy in the above entitled matter and to his attorney, Raphael Dechter:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE, that Chas. W. Fourl hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Order of the above entitled court adjudging said Chas. W. Fourl to be in contempt thereof, pursuant to petition of E. A. Lynch and order to show cause thereon, dated and filed herein September 11, 1934, entered in the above entitled action in the District Court of the United States for the Southern District of California, Central Division, on the 24th day of September, 1934, whereby it was adjudged that Chas. W. Fourl pay a fine in the sum of one thousand dollars and be committed to the custody of the Marshal until he pays the same.

A certified transcript of the record will be filed in the said Appellate Court within the period prescribed by the Citation herein or within the time allowed by stipulation.

Dated: September 24, 1934.

Hiram E. Casey

Edward W Tuttle

Attorneys for Chas. W. Fourl

[Endorsed]: Filed R. S. Zimmerman, Clerk at 2 min. past 12:00 o'clock Sep. 24, 1934 A. M. By L. B. Figg, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS

Chas. W. Fourl having petitioned for an order from the above entitled court permitting him to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, from the order and judgment of conviction in and against him in this case, and Chas. W. Fourl having duly given notice of appeal as provided by law, now makes and files with his petition for appeal the following assignment of errors upon which he will rely for a reversal of the judgment upon appeal and which said errors, and each of them, are to the great detriment, injury and prejudice of Chas. W. Fourl and in violation of the rights conferred upon him by law; and Chas. W. Fourl says that, in the record and proceedings in this cause, upon the hearing and determination thereof in the Central Division of the United States District Court for the Southern District of California, there is manifest error in this, to-wit:

I

The court erred in overruling the motion of Chas. W. Fourl to dismiss the petition and order to show cause in re contempt and restoration of possession.

II

The court erred in permitting the proceedings instituted and tried as civil proceedings to go to final judgment in criminal contempt.

III

The court erred in finding Chas. W. Fourl guilty of criminal contempt on evidence produced in a civil proceeding.

IV.

The court erred in finding Chas. W. Fourl guilty of a criminal contempt without any charge in criminal contempt ever having been brought against him.

V

The court erred in exercising criminal jurisdiction in a civil proceeding in which no criminal jurisdiction exists.

VI

The court erred in finding Chas. W. Fourl guilty of a criminal offense against the United States of America in an action in which the United States of America is not now nor ever has been a party.

VII

The court erred in refusing to dismiss the whole proceedings against Chas. W. Fourl upon the conclusion of the entire case.

VIII

The court erred in finding Chas. W. Fourl guilty of contempt and sentencing him to days in jail.

IX

The court erred in finding Chas. W. Fourl guilty of contempt upon evidence received and considered by the court from persons not under oath and not in the presence of the respondent, Chas. W. Fourl, to-wit, evidence taken at a hearing as to Katie E. Eustace on the same order but prior to service on, or appearance by appellant,

at which hearing appellant was not present or represented, to the effect that Katie M. Eustace was running the plumbing business at 1246 E. Ninth St., paying the bills from money kept in the name of a stranger, and carried in her possession signed checks on such bank account.

X

The court erred in finding Chas. W. Fourl guilty of contempt upon the evidence of witnesses with whom the said Chas. W. Fourl was not confronted and which witnesses he was not afforded an opportunity of cross-examining.

XI

The court erred in the admission and rejection of evidence in this, that the court rejected the proof offered by Chas. W. Fourl with respect to the marital status of the alleged bankrupt and with respect to the ownership of the property concerning which these proceedings were instituted.

XII

The court erred in finding Chas. W. Fourl guilty of criminal contempt and in sentencing him to be imprisoned on proceedings founded upon an affidavit and an order to show cause which is not sufficient in form or substance to warrant a proceeding in criminal contempt.

XIII

The court erred in the admission and rejection of evidence in this, that he admitted the hearsay declarations of J. G. Stevenson as to who hired and paid him, as to who was in charge of and who owned the plumbing business at 1246 E. Ninth Street, and of John Eustace, Jr., and hearsay statements not made in the presence of Chas. W. Fourl.

XIV

The court erred in finding Chas. W. Fourl guilty of contempt and adjudging him guilty of contempt on evidence which is wholly insufficient to justify such finding and such sentence.

XV

The court erred in finding Chas. W. Fourl guilty of criminal contempt and sentencing him when the order appointing the receiver in the above entitled matter did not direct such receiver to take possession of the property concerning which the said Chas. W. Fourl is found guilty of contempt.

XVI

The court erred in permitting the petitioner to call and examine appellant as a witness against himself.

XVII

The court erred in overruling the special appearance of Chas. W. Fourl and his objection to the jurisdiction of this Court to try this matter and his objection to the summary procedure which seeks to try title to and the right to possession to property belonging to and in the possession of strangers to this bankruptcy proceeding and which seeks in such summary proceeding to charge Chas. W. Fourl with a contempt as the agent of such a stranger to said bankruptcy proceedings.

XVIII

The court erred in assessing against appellant an excessive fine without any evidence showing the amount of the damage or injury to the petitioner.

XIX

The court erred in sustaining objection to appellant's offer to prove that the plumbing business, concerning

which the alleged contempt was committed, had been owned and operated by John M. Eustace, husband of Katie M. Eustace, prior to their marriage in 1904 and continuously ever since, and that she merely assisted him in it and had never put any money in it or acquired any right in it except a community property interest; that Katie M. Eustace was never a sole trader nor qualified or licensed as a Master plumber, and that the license for conducting the plumbing business at 1246 East Ninth Street was and is held by John M. Eustace.

XX

The court erred in refusing to grant appellant a full and fair trial on the merits herein, in refusing to allow appellant to properly examine and cross-examine witnesses produced against him, and by compelling the trial to proceed at irregular hours and intervals, and by compelling a hurried and limited hearing of the said trial.

XXI

The court erred in sustaining objection to appellant's offer to prove by the witness E. A. Lynch that before attempting to take possession of the plumbing business at 1246 East Ninth Street said E. A. Lynch knew that said business was not in the possession of nor owned by Katie M. Eustace but belonged and had always belonged to her husband, John M. Eustace.

Hiram E. Casey

Edward W. Tuttle

Attorneys for Chas. W. Fourn Appellant

[Endorsed]: Filed R. S. Zimmerman, Clerk at 2 min.
past 12:00 o'clock Sep. 24, 1934 *A. M.* By L. B. Figg,
Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL

This cause coming on to be heard upon motion of Chas. W. Fourl, for an order granting him an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit from an order adjudging him in contempt of the above entitled court in the above entitled matter, pursuant to petition of E. A. Lynch and order to show cause thereon, filed and dated September 11, 1934, and the same having been considered by the court and good cause appearing therefor,

IT IS ORDERED AND ADJUDGED that said appeal be and the same is hereby allowed to the Circuit Court of Appeals of the United States for the Ninth Circuit.

AND IT IS FURTHER ORDERED that the bond of Chas. W. Fourl on appeal is hereby fixed in the sum of \$250.00 for cost on appeal.

Done and Ordered in open Court at Los Angeles, California, this 24th day of September, 1934.

Geo. Cosgrave
United States District Judge.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 3 min. past 12:00 o'clock Sep. 24, 1934 A. M. By L. B. Figg, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

BOND FOR COSTS APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Chas. W. Fowl, as principal, and Fidelity and Deposit Company, of Maryland, a corporation, existing under the laws of the State of Maryland, and authorized to act as surety under the Act of Congress approved August 13, 1894, whose principal office is located in Baltimore, Maryland, as Surety, are held and firmly bound unto the United States of America in the full and just sum of Two Hundred and Fifty Dollars (\$250.00), in lawful money of the United States to be paid to the said United States for which payment well and truly to be made we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Signed and sealed this 25th day of September, 1934.

The condition of this obligation is such that whereas the above named Chas. W. Fowl, the appellant herein, has appealed or is about to appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment and sentence of contempt herein, made and entered against respondent and appellant Chas. W. Fowl in the above entitled court and in the above entitled action on or about the 24th day of September, 1934;

NOW THEREFORE, in consideration of the premises and of such appeal if the said appellant shall prose-

cute his appeal to effect and pay all costs that may be adjudged against him if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Signed, sealed and dated this 25th day of September, A. D. 1934.

Chas. W. Fournl

Principal

(Seal) FIDELITY AND DEPOSIT COM-
PANY OF MARYLAND

By W. M. Walker

(W. M. Walker)

Attorney in Fact

Attest: Theresa Fitzgibbons

(Theresa Fitzgibbons)

Agent.

[Seal]

Examined and recommended for approval in accordance with Rule 28.

Edward W. Tuttle

Attorney at Law.

THE FOREGOING BOND IS HEREBY APPROVED.

Dated: September 26, 1934.

Geo. Cosgrave

United States District Judge.

STATE OF CALIFORNIA)
 County of Los Angeles) ss:

On this 25th day of September, 1934, before me S. M. Smith, a Notary Public, in and for the County and State aforesaid, duly commissioned and sworn, personally appeared W. M. Walker and Theresa Fitzgibbons known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney-in-Fact and Agent respectively of the Fidelity and Deposit Company of Maryland, and acknowledged to me that they subscribed the name of Fidelity and Deposit Company of Maryland thereto as Principal and their own names as Attorney-in-Fact and Agent respectively.

[Seal]

S. M. Smith

Notary Public in and for the State of California, County
 of Los Angeles.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 32
 min. past 9:00 o'clock Sep. 26, 1934 A. M. By L. B.
 Figg, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

IN THE MATTER OF)	
Katie M. Eustace, etc.,)	
Alleged Bankrupt)	
_____	)	No. 23770-C
E. A. LYNCH Receiver of)	
Katie M. Eustace, etc.,	)	PETITION TO
Petitioner,	)	ALLOW APPEAL
vs.	)	AND TO FIX BOND.
Katie M. Eustace,)	
Respondent.)	

Katie M. Eustace, having filed her Notice of Appeal herein from an order adjudging her in contempt of the above entitled court, pursuant to petition of E. A. Lynch and order to show cause thereon, dated and filed September 11, 1934, in the above entitled matter, accompanied by her Assignment of Errors in the above entitled matter, now prays the Court that her appeal be allowed and that an order fixing her bond on appeal staying proceedings and for costs be made.

Dated: October 1st, 1934.

Katie M. Eustace
(Katie M. Eustace)

Hiram E Casey
(Hiram E. Casey)

Attorney for Katie M. Eustace.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 27 min. past 3:00 o'clock Oct.-1, 1934 P. M. By F. Betz, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

NOTICE OF APPEAL

To E. A. Lynch, Alleged Receiver in Bankruptcy in the above entitled matter and to his attorney, Raphael Dechter:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Katie M. Eustace hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Order of the above entitled court adjudging said Katie M. Eustace to be in contempt thereof, pursuant to petition of E. A. Lynch and order to show cause thereon, dated and filed herein September 11, 1934, entered in the above entitled action in the District Court of the United States for the Southern District of California, Central Division, on the 1st day of October, 1934, whereby it was adjudged that Katie M. Eustace pay a fine of the sum of One Thousand (\$1000.00) Dollars

A certified transcript of the record will be filed in the said Appellate Court within the period prescribed by the Citation herein or within the time allowed by stipulation.

Dated: October 1st, 1934.

Hiram E. Casey

Attorney for Katie M. Eustace.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 28 min. past 3:00 o'clock Oct-1, 1934 P. M. By F. Betz, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS

Katie M. Eustace having petitioned for an order from the above entitled court permitting her to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit from the judgment of conviction in and against her in this case pursuant to Petition of E. A. Lynch and Order to Show Cause dated September 11, 1934, and Katie M. Eustace having duly given notice of appeal as provided by law, now makes and files with her petition for appeal the following assignment of errors upon which she will rely for a reversal of the judgment upon appeal and which said errors, and each of them are to the great detriment, injury and prejudice of Katie M. Eustace and in violation of the rights conferred upon her by law; and Katie M. Eustace says that, in the record and proceedings in this cause, upon the hearing and determination thereof in the Central Division of the United States District Court for the Southern District of California, there is manifest error in this, to-wit:

I.

The court erred in overruling the motion of Katie M. Eustace to dismiss the petition and order to show cause in re contempt and restoration of possession.

II.

The court erred in permitting the proceedings instituted and tried as civil proceedings to go to final judgment in criminal contempt.

III.

The court erred in finding Katie M. Eustace guilty of criminal contempt on evidence produced in a civil proceeding.

IV.

The court erred in finding Katie M. Eustace guilty of a criminal contempt without any charge in criminal contempt ever having been brought against her.

V.

The court erred in exercising criminal jurisdiction in a civil proceeding in which no criminal jurisdiction exists.

VI.

The court erred in finding Katie M. Eustace guilty of a criminal offense against the United States of America in an action in which the United States of America is not now nor ever has been a party.

VII.

The court erred in refusing to grant appellant's motion to dismiss the whole proceedings against Katie M. Eustace upon the conclusion of the entire case.

VIII.

The court erred in finding Katie M. Eustace guilty of contempt in sentencing her to days in jail.

IX.

The court erred in finding Katie M. Eustace guilty of contempt and in adjudging her guilty of contempt on proceedings founded upon an affidavit and an order to show cause which contains an insufficiency of statement of facts to justify a proceeding in contempt.

X.

The court erred in the admission and rejection of evidence in this, that the court admitted the hearsay declarations of J. G. Stevenson and John Eustace, Jr. and hearsay testimony and statements not made in the presence of Katie M. Eustace.

XI.

The court erred in finding Katie M. Eustace guilty of contempt and adjudging her guilty of contempt on evidence which is wholly insufficient to justify such finding and such judgment.

XII.

The court erred in finding Katie M. Eustace guilty of contempt and adjudging her guilty of contempt when the order appointing the receiver in the above entitled matter did not direct such receiver to take possession of the property concerning which the said Katie M. Eustace is found guilty of contempt.

XIII.

The court erred in making and issuing its order to show cause returnable in one day and upon return day thereof refusing Katie M. Eustace a reasonable time and opportunity within which to prepare and file a written appearance and answer to the said petition herein, and refusing Katie M. Eustace a reasonable time within which to procure necessary witnesses on her behalf, and in proceeding forthwith to trial without any notice thereof.

XIV.

The court erred in refusing to grant to Katie M. Eustace a full and fair trial on the merits herein in refusing to allow the said Katie M. Eustace to procure and have present at all times in the trial of the matter herein, a court reporter, official, or any shorthand reporter to report and preserve the hearing of the said proceedings, and in this that the said court refused the said Katie M. Eustace a full and fair trial in compelling the said trial to proceed to trial at irregular hours and intervals and in compelling a hurried and limited hearing of the trial and proceedings and without a full and clear understanding either of court, counsel or Katie M. Eustace as to whether the hearings and proceedings taken by the court were in the matter of Katie M. Eustace and pertained to her trial or to some other proceedings before the court.

XV.

The court erred in refusing to admit the offer of Katie M. Eustace to produce witnesses to testify to the facts set forth and stated to the court on her offer of proof to produce witnesses to testify thereto and in ruling that the said evidence so offered would not be admissible or received.

XVI.

The court erred in holding the evidence sufficient to convict Katie M. Eustace guilty of a contempt.

XVII.

The court erred in denying the Motion of Katie M. Eustace to dismiss the proceeding against her because of the insufficiency of the evidence to support the charge of contempt.

XVIII

The court erred in assessing the appellant with a large and excessive fine without any evidence showing the amount, if any, damage or injury to the petitioner.

XIX.

The court erred in permitting Katie M. Eustace, the alleged bankrupt, to be called and examined as a witness in said proceeding against herself, by the petitioner therein.

Hiram E. Casey

Attorney for Katie M. Eustace, Appellant.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 28 min. past 3:00 o'clock Oct-1, 1934 P. M. By F. Betz, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL

This cause coming on to be heard upon motion of Katie M. Eustace, for an order granting her an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit from an order adjudging her in contempt of the above entitled court in the above entitled matter, pursuant to petition of E. A. Lynch and order to show cause thereon filed and dated September 11, 1934 and the same having been considered by the court and good cause appearing therefor,

IT IS ORDERED AND ADJUDGED that said appeal be and the same is hereby allowed to the Circuit Court of Appeals of the United States for the Ninth Circuit.

AND IT IS FURTHER ORDERED that the bond of Katie M. Eustace on appeal is hereby fixed in the sum of \$250.00 for costs on appeal and \$2500.00 for a super-sedeas bond.

Done and Ordered in open Court at Los Angeles, California, this 1st day of October, 1934.

Geo. Cosgrave
United States District Judge

[Endorsed]: Filed R. S. Zimmerman, Clerk at 27 min. past 4:00 o'clock Oct-1, 1934 P. M. By Theodore Hocke, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

BOND FOR COSTS ON APPEAL

KNOW ALL MEN BY THESE PRESENTS: That we, Katie M. Eustace, as principal, and Fidelity and Deposit Company of Maryland, a corporation, existing under the laws of the State of Maryland, and authorized to act as surety under the Act of Congress approved August 13, 1894, whose principal office is located in Baltimore, Maryland, as Surety, are held and firmly bound unto the United States of America in the full and just sum of Two Hundred Fifty Dollars (\$250.00), in lawful money of the United States to be paid to the said United States for which payment well and truly to be made we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Signed and sealed this 4th day of October, 1934.

The condition of this obligation is such that whereas the above named Katie M. Eustace, the appellant herein, has appealed or is about to appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment and sentence of contempt herein, made and entered against respondent and appellant Katie M. Eustace in the above entitled court and in the above entitled action on or about the 1st day of October, 1934:

NOW THEREFORE, in consideration of the premises and of such appeal if the said appellant shall prose-

cute her appeal to effect and pay all costs that may be adjudged against her if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

Signed, sealed and dated this 4th day of October,
A. D. 1934.

Katie M. Eustace

Principal

FIDELITY AND DEPOSIT COM-
PANY OF MARYLAND

By W. M. Walker

(W. M. Walker)

Attorney in Fact

Attest: Theresa Fitzgibbons

Agent

(Theresa Fitzgibbons)

[Seal]

Examined and recommended for approval in accordance with Rule 28.

Hiram E. Casey

Attorney at Law

THE FOREGOING BOND IS HEREBY APPROVED.

Dated: October 8 1934.

Wm. P. James

United States District Judge.

STATE OF CALIFORNIA)
 County of Los Angeles) ss.

On this 4th day of October, 1934, before me S. M. Smith, a Notary Public, in and for the County and State aforesaid, duly commissioned and sworn, personally appeared W. M. Walker and Theresa Fitzgibbons known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney-in-Fact and Agent respectively of the Fidelity and Deposit Company of Maryland, and acknowledged to me that they subscribed the name of Fidelity and Deposit Company of Maryland thereto as Principal and their own names as Attorney-in-Fact and Agent, respectively.

[Seal]

S. M. Smith

Notary Public in and for the State of California, County
 of Los Angeles.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 49
 min past 9:00 o'clock Oct.-8, 1934 A. M. By Theodore
 Hocke, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

JOINT PRAECIPE

To the Clerk of the above entitled Court:

You are hereby jointly requested by the undersigned, E. A. Lynch, as receiver in bankruptcy of Katie M. Eustace, alleged bankrupt, appellee, and by Charles W. Fournl, and Katie M. Eustace, appellants in the above entitled matter on their two respective appeals to the Ninth Circuit, from those certain orders of the above entitled Court entered in the minutes of said Court on the 22nd day of September, 1934 and the 1st day of October, 1934, respectively, to make a joint transcript of record for the said two appeals to be filed in the said United States Circuit Court of Appeals for the Ninth Circuit and to constitute the record on appeal in each of said two appeals and to include in the said transcript the following:

1. Petitioning Creditors' Original Involuntary Petition.
2. Petition for Appointment of Receiver.
3. Order Appointing E. A. Lynch Receiver.
4. Petition of E. A. Lynch for Order to Show Cause and Contempt dated September 11, 1934.
5. Petition for Appeals by Charles W. Fournl and Katie M. Eustace.
6. Notice of Appeals of Charles W. Fournl and Katie M. Eustace.

7. Assignments of Errors of Charles W. Fowl and Katie M. Eustace.
8. Orders Allowing Appeals of Charles W. Fowl and Katie M. Eustace.
9. Citations on Appeals in re Charles W. Fowl and Katie M. Eustace.
10. Costs Bonds of Charles W. Fowl and Katie M. Eustace.
11. Joint Praecept.
12. Statement of Evidence on Appeals and Stipulation and Order Settling same.
13. Minute Order of September 22, 1934.
14. Minute Order of October 1, 1934.
15. Order to Show Cause in re Contempt and Restoration of Possession signed and filed September 11, 1934.
16. Answer of Charles W. Fowl to said Petition of E. A. Lynch in re Contempt and Restoration and to said Order to Show Cause.
17. Minute Order of September 24, 1934 containing judgment and sentence of the Court as to Charles W. Fowl, fining him for Contempt and committing him to custody of the Marshal until paid.
18. Minute Order of September 12, 1934.

19. Formal Order of Judge Cosgrave finding and adjudging Katie M. Eustace in Contempt, dated September 13, 1934.

20. Formal Order of Judge Cosgrave finding and adjudging Katie M. Eustace and Charles W. Fourl in Contempt, dated September 22, 1934.

R. Dechter

Attorney for the Receiver and for the Court

EDWARD W. TUTTLE AND
HIRAM E. CASEY by
Hiram E. Casey

Attorneys for Charles W. Fourl

Hiram E. Casey

Attorney for Katie M. Eustace

[Endorsed]: Filed May 16, 1935 at 11 o'clock A. M.
R. S. Zimmerman, Clerk Theodore Hocke, Deputy.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 162 pages, numbered from 1 to 162 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellants, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation of Chas. W. Fourl; citation of Katie M. Eustace; involuntary petition in bankruptcy; petition for appointment of receiver; order appointing receiver; petition of E. A. Lynch, as receiver, for an order to show cause in re contempt; order to show cause; order of September 12, 1934 overruling demurrer to order to show cause; order of September 13, 1934; answer of Chas. W. Fourl to petition and order to show cause re contempt; statement of evidence; order of September 22, 1934 finding Katie M. Eustace and Chas. W. Fourl guilty of contempt; order in re contempt; order of September 24, 1934 containing judgment and sentence as to Chas. W. Fourl; order of October 1, 1934 containing judgment and sentence of Katie M. Eustace; petition for appeal, notice of appeal, assignment of errors, order allowing appeal and bond on appeal of Chas. W. Fourl; petition for appeal, notice of appeal, assignment of errors, order allowing appeal and bond on appeal of Katie M. Eustace and joint praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and

that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division this day of June, in the year of Our Lord One Thousand Nine Hundred and Thirty-five and of our Independence the One Hundred and Fifty-ninth.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.